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# ACUTE POVERTY: The Fatal Flaw in U.S. Anti-Poverty Law

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*Debates over inequality have largely ignored the largest body of people living in poverty. Although anti-poverty policymaking focuses overwhelmingly on the chronic poor, a far larger number of people suffer occasional acute bouts of poverty. The causes of the acute poor's problems, and their needs, differ significantly from those of the chronic poor. Even short spells of poverty can cause serious, physical, psychological, and material harm as well as impairment in their ability to return to their former circumstances.*

*Demographically, the acute poor resemble the general population far more than the chronic poor, yet they receive little sympathy: politicians may praise them in the abstract, but all too often the acute poor become collateral damage in struggles over the treatment of the chronic poor. The standard model of public welfare law, which is built around avoiding moral hazard, ill-fits the acute poor. A combination of eligibility limits, arduous procedures, deliberate stigmatization, waiting lists, and conduct requirements reduces the chronic poor's receipt of aid but often affects the acute poor even more powerfully. More recently, some politicians have begun to attack the acute poor directly. The acute poor pay for the safety net in good times but cannot access it in bad.*

*Replacing the standard model of public welfare law would allow limited public funds to better serve all low-income people, acute and chronic alike. Greater attention to the acute poor would reduce their hardship and could lead to reexamination of some overly simplistic ideas about the chronic poor as well.*

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## INTRODUCTION

Census Bureau data released in 2018 showed broad income growth at a pace not seen since the late 1990s, with real median income rising sharply for the third consecutive year.<sup>1</sup> Prior to the coronavirus pandemic, the United States had eleven consecutive years of economic growth. The official unemployment rate was below 4% after many years above 5% since the end of the 1990s boom.<sup>2</sup> The dollar was strong,<sup>3</sup> the housing sector was booming,<sup>4</sup> stock prices were at or near record highs,<sup>5</sup> and the federal deficit had been shrinking rapidly away before Congress deliberately increased it with a huge tax cut.<sup>6</sup> With the economies of Europe and Japan in the doldrums, and Brazil, China, and other formerly fast-growing countries hitting the skids, this country's economy should have been the envy of the world.

Yet discontent was widespread. Polls about the direction of the country consistently said that we were on the wrong track by almost twenty percentage points.<sup>7</sup> In the last presidential election, an apparent long-shot populist candidate channeling widespread anger came close to upending the establishment in one of our major political parties; another did so in the other party and then stunned political experts by winning the presidency. Along the way, radical third parties' presidential candidates were polling 10% deep into September, when voters usually have coalesced around the major party nominees.<sup>8</sup> Although President Trump is polarizing in the near-term, groups on both the Left and the Right are so angry they

1. KAYLA FONTENOT ET AL., U.S. CENSUS BUREAU, P60-263, INCOME AND POVERTY IN THE UNITED STATES: 2017, at 5 (2018). Median income in 2018 continued to rise, albeit by a statistically insignificant amount. JESSICA SEMEGA ET AL., U.S. CENSUS BUREAU, P60-266, INCOME AND POVERTY IN THE UNITED STATES: 2018, at 3 (2019).

2. U.S. BUREAU OF LABOR STATISTICS, USDL-20-0180, THE EMPLOYMENT SITUATION—JANUARY 2020, at 1–2 (2020). The unemployment rate began rising with the onset of the 2001 recession and reached 5% in September of that year.

3. Jeanna Smialek, *How the Fed Chairman Is Shielding It from Trump*, N.Y. TIMES (Jan. 28, 2020), <https://www.nytimes.com/2020/01/28/business/economy/federal-reserve-jay-powell.html> [<https://perma.cc/SZF2-D7TH>]; Maggie Fitzgerald, *The US Dollar Just Hit a Two-Year High and Is Threatening to Make Another Major Milestone*, CNBC (Sept. 3, 2019, 9:03 AM), <https://www.cnbc.com/2019/09/03/the-us-dollar-just-hit-a-two-year-high-and-is-threatening-to-make-another-major-milestone.html> [<https://perma.cc/V8NE-AX72>].

4. Kathy Orton, *Experts Predict What the 2020 Housing Market Will Bring*, WASH. POST (Jan. 6, 2020, 10:05 AM), <https://www.washingtonpost.com/business/2020/01/06/experts-predict-what-housing-market-will-bring/> [<https://perma.cc/HH73-QBUA>].

5. Herbert Lash, *Stocks Surge to Record Highs on Hopes Virus Is Peaking, Gold Ebbs*, REUTERS (Feb. 11, 2020, 4:32 PM), <https://www.reuters.com/article/us-global-markets/stocks-surge-to-record-highs-on-hopes-virus-is-peaking-gold-ebbs-idUSKBN20501G> [<https://perma.cc/BS98-546L>].

6. CONG. BUDGET OFFICE, 52801, AN UPDATE TO THE BUDGET AND ECONOMIC OUTLOOK: 2017 TO 2027, at 10 (2017).

7. *Direction of Country*, REALCLEARPOLITICS, [https://realclearpolitics.com/epolls/other/direction\\_of\\_country-902.html](https://realclearpolitics.com/epolls/other/direction_of_country-902.html) [<https://perma.cc/SZ3W-QFS5>] (last visited Feb. 11, 2020).

8. *General Election: Trump vs. Clinton vs. Johnson vs. Stein*, REALCLEARPOLITICS, [http://www.realclearpolitics.com/epolls/2016/president/us/general\\_election\\_trump\\_vs\\_clinton\\_vs\\_johnson\\_vs\\_stein-5952.html](http://www.realclearpolitics.com/epolls/2016/president/us/general_election_trump_vs_clinton_vs_johnson_vs_stein-5952.html) [<https://perma.cc/GB3V-4TGJ>] (last visited Sept. 14, 2016).

are coming close to calling a second constitutional convention,<sup>9</sup> which could put the very fabric of our democracy up for grabs.<sup>10</sup>

The primary source of this discontent, despite all the rosy statistics, is economic. Bernie Sanders won enthusiastic support with forceful criticism of economic inequality, and inequality was central to many candidates' 2020 campaigns. This message clearly resonated with the lived experience of many people.

Economic dissatisfaction is at the core of Donald Trump's ascendancy as well. A good deal of his message was one of economic revival. But even the other aspects of his appeal have a strong hidden economic component. Trump supporters disproportionately feel politically marginalized,<sup>11</sup> but even the focus of this anger is economic: they believe that the elites have rigged the economy against them. President Trump's support also depended significantly on racial animus, with strong evidence suggesting that hostility to African-Americans is the single best predictor of support for his candidacy.<sup>12</sup> But racism has been endemic throughout this country's history; the effectiveness of race-based appeals varies depending on the general level of unease among the whites to whom those appeals are made.<sup>13</sup> Intensity of xenophobia, too, rises and falls with economic insecurity. The persistent unemployment that followed the Great Recession left those with latent racial resentments claiming that "their" jobs had gone to people of color. This made them receptive to the Tea Party's appeals.<sup>14</sup> Although President Trump did not follow the Tea Party script—his professed reluctance to cut major middle-class entitlements

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9. See *States Calling for an Article V Convention*, BBA TASK FORCE, <http://bba4usa.org/> [<https://perma.cc/C4BL-2SXF>] (last visited April 2, 2020) (claiming to be only six states short of compelling Congress to call a convention).

10. David Super, *A Constitutional Convention Would Be a Brexit-Scale Crisis for the U.S.*, L.A. TIMES (July 7, 2016), <https://www.latimes.com/opinion/op-ed/la-oe-super-constitutional-convention-balanced-budget-amendment-20160706-snap-story.html> [<https://perma.cc/2FSZ-W85Y>].

11. Michael Pollard & Joshua Mendelsohn, *RAND Kicks Off 2016 Presidential Election Panel Survey*, RAND (Jan. 27, 2016), <http://www.rand.org/blog/2016/01/rand-kicks-off-2016-presidential-election-panel-survey.html> [<https://perma.cc/L9GQ-FMVY>] (finding that voters believing that people like them lack a political voice were 86% more likely to support Trump).

12. Jason McDaniel & Sean McElwee, *Racial Resentment and the Rise of Donald Trump*, W. POL. SCI. ASS'N: NEW W. (Mar. 27, 2016), <https://thewpsa.wordpress.com/2016/03/27/racial-resentment-and-the-rise-of-donald-trump/> [<https://perma.cc/8PQV-GJER>].

13. For example, the economic dislocations of the early 1970s allowed George Wallace, a prominent opponent of civil rights, to win the Michigan Democratic primary in 1972 and do well in working-class neighborhoods around the country. JEFFREY D. SACHS, *THE PRICE OF CIVILIZATION: REAWAKENING AMERICAN VIRTUE AND PROSPERITY* 69 (2011). Going back further, years of virulent racist assaults on federal protection of freed slaves in the South finally won an end to Reconstruction when the Long Depression, beginning in 1873, stoked insecurity among northern whites.

14. See ALAN I. ABRAMOWITZ, *PARTISAN POLARIZATION AND THE RISE OF THE TEA PARTY MOVEMENT* 11–12 (2011), <http://faculty.washington.edu/jwilker/353/AbramowitzTea.pdf> [<https://perma.cc/W6CG-K84M>] (finding racial animus an important determinant of support for the Tea Party movement).

such as Social Security and Medicare fits badly with the Tea Party's avowed commitment to small government—his message that white Americans' jobs were being lost to people of color within and outside our borders fit that resentment even better.<sup>15</sup>

The intensity of this sense of economic grievance has perplexed most of the political and economic establishment, in part because it does not correspond to the measures of economic well-being that they are accustomed to tracking. Democrats complain that President Obama did not receive the credit he was due for vast improvements in the economy since he took office.<sup>16</sup> Republicans are perplexed that they lost the 2018 midterm elections despite historically low unemployment. Democrats insist the lower-middle-class voters that put Donald Trump over the top in key swing states ought to have been more grateful to Democrats, in particular for the Affordable Care Act; Republicans insist that Democrats have neglected these voters but are privately anxious that they have little to offer them.<sup>17</sup> Both seem deeply confused about the source of popular anger. Economically anxious voters see the political and economic elite as dismissive of their problems and gravitate increasingly to outsiders almost without regard to those candidates' programs.<sup>18</sup>

Notwithstanding elites' befuddlement, economic insecurity is a real and growing problem in this country—and one that the dominant model of anti-poverty law has failed miserably to address. The Great Recession, although not matching the Great Depression's total impact, nonetheless transformed much of society, spawning staggering amounts of long-term unemployment and eliminating industries that had long provided a stable, decent standard of living to millions of low-skilled workers.<sup>19</sup> The shift from manufacturing to the service economy typically costs men without college degrees 15–20% of their wages.<sup>20</sup> In the decade

15. Indeed, President Trump seems to have reengaged a crucial part of the coalition that helped Franklin Roosevelt enact the New Deal: those that support generous social welfare programs for whites while denying aid to people of color. Paul Krugman, *Trump in a Box*, N.Y. TIMES: THE CONSCIENCE OF A LIBERAL (Aug. 19, 2015, 1:48 PM), <http://krugman.blogs.nytimes.com/2015/08/19/trump-in-a-box/> [https://perma.cc/29TR-DL2X].

16. In 2008, candidate Obama spoke condescendingly about low-skilled, small-town workers as bitterly clinging to unrealistic economic hopes and turning to guns, religion, and xenophobia for solace. Michael Saul, *Obama: Some Pennsylvanians 'Bitter,'* N.Y. DAILY NEWS (Apr. 12, 2008, 4:53 PM), <https://www.nydailynews.com/news/politics/obama-pennsylvanians-bitter-article-1.283600> [https://perma.cc/7XEQ-3AHU].

17. Robert Pear & Thomas Kaplan, *In Private, Republican Lawmakers Agonize over Health Law Repeal*, N.Y. TIMES (Jan. 27, 2017), <https://www.nytimes.com/2017/01/27/us/politics/affordable-care-act-republican-retreat.html> [https://perma.cc/B3P2-ZXM4].

18. Significant numbers of Trump voters reported that Sanders was their second choice, and vice versa. Thomas B. Edsall, *The Trump-Sanders Fantasy*, N.Y. TIMES (Feb. 24, 2016), <https://www.nytimes.com/2016/02/24/opinion/campaign-stops/the-trump-sanders-fantasy.html> [https://perma.cc/7VUD-JMZJ].

19. DOUGLAS E. SCHOEN, HOPELESSLY DIVIDED: THE NEW CRISIS IN AMERICAN POLITICS AND WHAT IT MEANS FOR 2012 AND BEYOND 2 (2012) [hereinafter SCHOEN, HOPELESSLY DIVIDED].

20. JARED BERNSTEIN, CRUNCH: WHY DO I FEEL SO SQUEEZED (AND OTHER UNSOLVED ECONOMIC MYSTERIES) 21 (2008).

prior to the Great Recession, the cost of childcare rose at twice the rate of inflation, college tuition at almost three times, and the median homes and out-of-pocket health care costs at three times the rate.<sup>21</sup> To the extent that families' real incomes have risen, it is because of increased earnings from women, which has reduced their capacity to provide extremely valuable if unmonetized labor in the home.<sup>22</sup>

The four years immediately following the Great Recession—from 2009 to 2012—saw historically low income mobility.<sup>23</sup> Those with lower incomes were the most likely to have their incomes stagnate or decline.<sup>24</sup> The occupations expected to add the most jobs in coming years are disproportionately at the low end of the pay scale.<sup>25</sup> With the number of low-skilled jobs insufficient to accommodate the number of workers needing them, employers have been able to erode both the wages and the dignity of these positions.<sup>26</sup> Wage theft, arbitrary discipline, uncorrected workplace hazards, and involuntary conversion to sham independent contractor status all drive home a message of powerlessness to these workers.<sup>27</sup>

Even more important than reduced incomes is the grinding insecurity that low-skilled workers faced even when the economy was strong. Although many have noted that low-skilled workers' real wages began to stagnate around 1970, few have pointed out that the volatility of their incomes began to grow at the same time.<sup>28</sup> Years after the recovery had been underway, this dislocation still caused three-quarters of voters to report that the economy was stagnant or getting worse, with most reporting that the uncertainty was adversely affecting their family lives.<sup>29</sup> Among those making less than \$75,000 per year in 2011, one-quarter to one-third had trouble paying for housing or health care or feared a pay cut or layoff in the coming year.<sup>30</sup> These fears were well-founded: although only 2.7% of the population was constantly poor during the four years following the Great Recession,<sup>31</sup> more than one-third of the population had a spell of poverty lasting at least two months during that period.<sup>32</sup> Although most recover, that is by no means

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21. *Id.* at 23.

22. *Id.* at 22–23.

23. See CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR, U.S. CENSUS BUREAU, P60-249, INCOME AND POVERTY IN THE UNITED STATES: 2013 4 (2014) [hereinafter DENAVAS-WALT & PROCTOR, INCOME AND POVERTY IN THE UNITED STATES: 2013].

24. *Id.*

25. TAMARA DRAUT, SLEEPING GIANT: HOW THE NEW WORKING CLASS WILL TRANSFORM AMERICA 21 (2016).

26. *Id.* at 19–39.

27. *Id.* at 47–61.

28. Benjamin J. Keys, *Trends in Income and Consumption Volatility, 1970-2000*, in INCOME VOLATILITY AND FOOD ASSISTANCE IN THE UNITED STATES 31 (Dean Jolliffe & James P. Ziliak eds., 2008).

29. SCHOEN, HOPELESSLY DIVIDED, *supra* note 19, at 8.

30. *Id.* at 39.

31. DENAVAS-WALT & PROCTOR, INCOME AND POVERTY IN THE UNITED STATES: 2013, *supra* note 23, at 4.

32. *Id.*

guaranteed: personal economic crises often lead to long-term poverty.<sup>33</sup> Even relatively short spells of poverty do direct damage to those involved and undermine their sense of security about the future.

Nor do they have much to look forward to farther down the road. Raising the retirement age to reduce social insurance outlays and press people to work longer has long been an article of faith among conservatives and many moderates. Now influential liberals have taken up the call, even while acknowledging that the lower-skilled workers that most depend on retirement benefits are also those least likely to be able to keep working or to find employment if they try.<sup>34</sup>

Responding to the power of large campaign donors, both political parties embrace policies that redistribute wealth regressively, to the detriment of lower-skilled workers clinging to middle-class status.<sup>35</sup> Politicians' measurable responsiveness to voters' sentiment has plummeted.<sup>36</sup> Polls show large numbers of voters, often majorities, believing that the U.S. government no longer represents its people.<sup>37</sup> Middle-class voters' pessimism about the future may be unprecedented in this country.<sup>38</sup>

The social costs are enormous. High income inequality correlates with a wide array of social ills, including homicide rates, teenage birth rates, prison populations, and substance abuse.<sup>39</sup> Even more fundamentally, it leads to loss of faith in government and the social cohesion that makes a society governable<sup>40</sup> and the trust in financial institutions that allows the economic system to function efficiently.<sup>41</sup> Understanding how inequality leads to this decay is, however, crucial. It undermines the institutions that people depend on in their daily lives: not just workplaces but also schools, religious congregations, local public services, and ultimately families.<sup>42</sup>

Alas, our discourse on poverty, and our public programs, are ill-equipped to recognize the very real suffering of the economically insecure. When we think of poverty, we imagine a grim, crowded urban ghetto of dilapidated housing and few

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33. Hilary W. Hoynes et al., *Long Run Impacts of Childhood Access to the Safety Net* (Nat'l Bureau of Econ. Research, Working Paper No. 18535, 2012) (finding anti-poverty programs promote social mobility).

34. ALICIA H. MUNNELL & STEVEN A. SASS, WORKING LONGER: THE SOLUTION TO THE RETIREMENT INCOME CHALLENGE 145 (2008).

35. SACHS, *supra* note 13, at 114–15.

36. NOLAN MCCARTY ET AL., POLARIZED AMERICA: THE DANCE OF IDEOLOGY AND UNEQUAL RICHES 172–74 (2006).

37. SCHOEN, HOPELESSLY DIVIDED, *supra* note 19, at 25–26.

38. *Id.* at 47.

39. DOUGLAS E. SCHOEN, THE END OF AUTHORITY: HOW A LOSS OF LEGITIMACY AND BROKEN TRUST ARE ENDANGERING OUR FUTURE 120 (2013); Kate E. Pickett et al., *Adolescent Birth Rates, Total Homicides, and Income Inequality in Rich Countries*, 95 AM. J. PUB. HEALTH 1181 (2005).

40. Pickett et al., *supra* note 39.

41. *Id.* at 122.

42. *Id.* at 121.



jobs,<sup>43</sup> run-down migrant labor camps,<sup>44</sup> decaying villages in Appalachia, isolated settlements on Native American reservations, or shotgun shacks on obscure backroads in the South.<sup>45</sup> A few more sophisticated people may think of declining inner-ring suburbs and bleak bedroom communities on the edges of our most affluent metropolitan areas.

Missing from these visions is economic insecurity and its consequence: acute, or episodic, poverty experienced by individuals and families that were living largely free of extreme want who are suddenly thrust into poverty because of a plant closure, an accident, a divorce, or an argument with the boss. Their hardship is very real, and the harm they suffer may be very long-lasting. Indeed, their nominal incomes may actually overstate their ability to meet their immediate needs as they struggle to keep up with monthly obligations assumed during better times.

The large group of economically vulnerable people who usually have incomes above the poverty line but occasionally face acute economic distress should be a major focus of political debates and of anti-poverty legislation. Their needs—short-term purchasing power—should be simpler and less expensive to meet. Doing so would have the effect of social insurance, with the taxes these families pay in good times more than sufficient to cover the costs of aid they need when in distress. And far more than the chronically poor, their loyalties are divided between the two major political parties.<sup>46</sup>

Yet serious attention to the plight of the acute poor has been largely absent from our national discourse about poverty and inequality. Anti-poverty law has resolutely relied on a two-prong model that assumes people's economic conditions are largely static: major social insurance programs serve those permanently unable to work due to age or disability while means-tested programs make meager provision for chronically impoverished families. Discussions of economic mobility tend to assume that people have long been poor and limit their focus to how, after many years, they finally escaped.<sup>47</sup> Occasionally critics of the chronic poor will hold up the acute poor as a supposed model for emulation.<sup>48</sup> At other times, advocates on one or the other side of debates on the chronic poor will try to push the line dividing acute from chronic poverty in one direction or the other to make

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43. See, e.g., WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996).

44. See, e.g., RONALD B. TAYLOR, *SWEATSHOPS IN THE SUN: CHILD LABOR ON THE FARM* (1973).

45. See generally CYNTHIA M. DUNCAN, *RURAL POVERTY IN AMERICA* (1992).

46. See, e.g., THOMAS FRANK, *WHAT'S THE MATTER WITH KANSAS? HOW CONSERVATIVES WON THE HEART OF AMERICA* (2004) (describing economically insecure families' support for Republicans).

47. See, e.g., KEN AULETTA, *THE UNDERCLASS 16* (rev. ed. 1999).

48. See, e.g., Mary K. Reinhart, *Arizona's Child-Welfare System Still In Crisis*, ARIZ. REPUBLIC (May 11, 2013, 1:02 AM), <http://archive.azcentral.com/arizonarepublic/news/articles/20121223arizonas-child-welfare-system-still-crisis.html> [<https://perma.cc/7BFV-ZL7Y>].

low-income people look better or worse.<sup>49</sup> More recently, critics of the chronic poor have begun to argue that the acute poor, too, are morally blameworthy and hence deserve their hardship.<sup>50</sup>

Thoughtful proposals about how to ameliorate the hardship of the economically insecure have been rare. In political rhetoric and in the design of our anti-poverty programs, the two-prong model reigns supreme and the acute poor are commonly collateral casualties in battles fought over chronic poverty.

The distinction between acute and chronic need has long been familiar in the context of health care programs. Although acute care services receive most of the attention, and are typically the prime targets for budget cuts, almost two-thirds of Medicaid expenditures go for long-term care and services to beneficiaries receiving such care.<sup>51</sup> To keep Medicare (relatively) affordable to the federal government, its long-term care benefit is designed to exclude those with chronic needs, shifting the burden to Medicaid (and, in part, to states).<sup>52</sup> Some major health care reform proposals made their budget numbers fit by avoiding, or making impractical proposals concerning, long-term care;<sup>53</sup> even the Affordable Care Act largely left the rules for providing long-term care as it found them.

That distinction, however, has not penetrated discussions of poverty and human needs more generally. In particular, this country has paid strikingly little attention to the tens of millions of people who become poor, often extremely poor, for discrete periods of time in response to conditions that are unlikely to persist indefinitely. Although the dividing line between acute and chronic poverty can at times be difficult to discern precisely—and particularly harsh bouts of acute poverty can trigger chain reactions that lead to chronic poverty—the acute poor have distinct sets of characteristics and needs that our policies built for the chronic poor often address badly, if at all.

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49. See, e.g., MARY JO BANE & DAVID T. ELLWOOD, *WELFARE REALITIES: FROM RHETORIC TO REFORM* (1994).

50. See, e.g., PAUL KERSEY & TIM KANE, HERITAGE FOUNDATION BACKGROUNDER #1754: *THE WRONG TIME TO EXTEND UNEMPLOYMENT INSURANCE 1* (2004) (decrying UC's "perverse incentives" and suggesting that recipients are unlikely to accept work until benefits run out).

51. CTR. ON BUDGET & POL'Y PRIORITIES, *POLICY BASICS: INTRODUCTION TO MEDICAID 3* (2016), [https://www.cbpp.org/sites/default/files/atoms/files/policybasics-medicaid\\_0.pdf](https://www.cbpp.org/sites/default/files/atoms/files/policybasics-medicaid_0.pdf) [<https://perma.cc/3BF5-C3Z7>].

52. 42 U.S.C. § 1395d(a)(2)(A), (f) (2018).

53. Andrew Mollison, *Four of 8 Health Reform Plans Rated Favorably*, PALM BEACH POST, May 18, 1994, at 13A.

Scholarly discourse on poverty overwhelmingly focuses on the chronic poor. This is true of historical accounts,<sup>54</sup> social scientific analyses,<sup>55</sup> and case studies.<sup>56</sup> Thus, for example, sociologist William Julius Wilson and economist Rebecca Blank believe that poverty results significantly from economic and demographic upheavals that have shifted jobs out of the inner cities<sup>57</sup> and that increasing the availability of jobs, childcare, and other subsidies for low-wage workers is crucial.<sup>58</sup> Economist David Ellwood also attributes poverty to broader societal changes, although he emphasizes family structure more.<sup>59</sup> These factors could be seen as increasing the likelihood of episodes of acute poverty, but discussion focuses largely on the number of people in chronic poverty.

Ellwood and Blank offer a long list of augmentations to existing programs keyed to politically popular themes such as rewarding work, collecting child support, and educating youth as well as transforming urban ghettos;<sup>60</sup> Ellwood emphasizes that his problem is with the chronic poor by proposing time limits on welfare (although he would guarantee employment for anyone reaching that time limit).<sup>61</sup> Wilson believes that European consensus-based interest-group politics make a meaningful response to poverty much easier than in the divisive U.S. political climate but that policy experts can design programs “to which the more advantaged groups of all races and class backgrounds can positively relate.”<sup>62</sup> Ellwood believes that clever policy experts can design policies that can build a broad consensus by avoiding the trade-offs that have previously divided us.<sup>63</sup> “Ending poverty’ is not a likely outcome in the foreseeable future,” writes Blank, but believes a broad coalition, spanning all levels of government, the private sector, and conscientious

54. *E.g.*, PETER EDELMAN, *SEARCHING FOR AMERICA’S HEART: RFK AND THE RENEWAL OF HOPE* 5-6 (2001); RON HASKINS, *WORK OVER WELFARE* (2006); MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* (1986) [hereinafter KATZ, *IN THE SHADOW OF THE POORHOUSE*]; WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* (5th ed. 1994).

55. *E.g.*, KATHRYN EDIN & LAURA LEIN, *MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK* (1997); HARRY J. HOLZER, *WHAT EMPLOYERS WANT: JOB PROSPECTS FOR LESS-EDUCATED WORKERS* (1996); KATHERINE S. NEWMAN, *NO SHAME IN MY GAME: THE WORKING POOR IN THE INNER CITY* (1999); WILSON, *supra* note 43.

56. *E.g.*, JASON DEPARLE, *AMERICAN DREAM: THREE WOMEN, TEN KIDS, AND A NATION’S DRIVE TO END WELFARE* (2004); BARBARA EHRENREICH, *NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA* (2001); DAVID ZUCCHINO, *MYTH OF THE WELFARE QUEEN: A PULITZER PRIZE-WINNING JOURNALIST’S PORTRAIT OF WOMEN ON THE LINE* (1997).

57. REBECCA M. BLANK, *IT TAKES A NATION: A NEW AGENDA FOR FIGHTING POVERTY* 13–82 (1997); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 140–46 (1987).

58. BLANK, *supra* note 57, at 252–89; WILSON, *supra* note 57, at 146–59, 163–64.

59. DAVID T. ELLWOOD, *POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY* 45–80 (1988).

60. BLANK, *supra* note 57, at 252–89; ELLWOOD, *supra* note 59, at 104–27, 155–85, 220–30.

61. ELLWOOD, *supra* note 59, at 178–83.

62. WILSON, *supra* note 57, at 155–63.

63. ELLWOOD, *supra* note 59, at 242–43.

individuals, can make progress.<sup>64</sup> Law professor Peter Edelman decries the simplistic view most Americans have of poverty—neglecting in particular concentrated poverty and deep poverty—but remains very much within the chronic poverty frame.<sup>65</sup>

The same obsession with the chronic poor is evident on the ideological right. Political scientist Charles Murray and journalist Marvin Olasky tell us that a lack of moral character is the driving cause of poverty.<sup>66</sup> Political scientist Lawrence Mead and economist Martin Anderson focus on what they see as a lack of work effort,<sup>67</sup> perhaps the result of psychological deficiencies<sup>68</sup> or insufficient incentives.<sup>69</sup> Murray believes that abolishing federal and state anti-poverty programs is the solution<sup>70</sup> and bemoans the sentimentality and bad social science that he says hold us back from dropping the ax.<sup>71</sup> Olasky argues that reducing aid to the poor and heavily conditioning what remained would correct that moral decline<sup>72</sup> and that liberals' alienation from the actual circumstances of the poor cause them to block these reforms.<sup>73</sup> Mead would like to see strict work and other conduct requirements for the poor<sup>74</sup> but believes liberals will never agree to the details required to make that happen.<sup>75</sup> Anderson proposes similar behavioral requirements as well as numerous changes to existing programs that would seek to limit aid to those most clearly unable to support themselves;<sup>76</sup> he blames the failure to adopt such a plan on advocates of a guaranteed minimum income entrenched in “strategic positions in government, the media, and academia” but believes bold national leadership could overcome them.<sup>77</sup>

Some proposals on the left might have somewhat greater impact on the acute poor, but even that benefit seems largely incidental to their focus on the chronic poor. Law professors Joel Handler and Yeheskel Hasenfeld reject morality-based explanations for poverty<sup>78</sup> in favor of the conclusion that poverty results primarily

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64. BLANK, *supra* note 57, at 292–93.

65. PETER EDELMAN, *SO RICH, SO POOR: WHY IT'S SO HARD TO END POVERTY IN AMERICA* (2012).

66. CHARLES MURRAY, *LOSING GROUND* 154–66 (1984); MARVIN OLASKY, *THE TRAGEDY OF AMERICAN COMPASSION* 116–50 (1992).

67. MARTIN ANDERSON, *WELFARE: THE POLITICAL ECONOMY OF WELFARE REFORM IN THE UNITED STATES* 87–123 (1978); LAWRENCE M. MEAD, *THE NEW POLITICS OF POVERTY* 48–63 (1992).

68. MEAD, *supra* note 67, at 12.

69. ANDERSON, *supra* note 67, at 43–56.

70. MURRAY, *supra* note 66, at 196–218.

71. *Id.* at 219–36.

72. OLASKY, *supra* note 66, at 149–50.

73. *Id.* at 176–94.

74. MEAD, *supra* note 67, at 206–09.

75. *Id.* at 251–54.

76. ANDERSON, *supra* note 67, at 153–65.

77. *Id.* at 167.

78. JOEL F. HANDLER & YEHESKEL HASENFELD, *WE THE POOR PEOPLE: WORK, POVERTY & WELFARE* 204 (1997).

from “the deterioration of the low-wage labor market,”<sup>79</sup> find the solution in numerous modifications of existing social welfare programs to increase subsidies to the working poor,<sup>80</sup> and believe that forthright discussion of “major income redistribution” can make this possible.<sup>81</sup> Sociologists Frances Fox Piven and Richard Cloward go further, arguing that poverty is the result of deliberate choices to discipline the workforce.<sup>82</sup> They would solve the problem with economic policies pushing the economy toward full employment or, failing that, through broad expansion of the welfare rolls,<sup>83</sup> which they hold is possible through organizing.<sup>84</sup> Michael Harrington attributed poverty to isolation, sometimes physical but almost always social.<sup>85</sup> He urged a combination of enthusiastic engagement with the poor, heavy federal spending to replace slums with good housing, and eradication of racism,<sup>86</sup> and he hoped to achieve that with a “crusade”<sup>87</sup> to end the poor’s isolation so that the affluent can no longer ignore their plight.<sup>88</sup> All of these are overwhelmingly prescriptions for the chronic poor alone.

Two groups of people exist in the space between the persistently poor and the economically secure: the stable near-poor and those subject to occasional bouts of acute poverty. Over the course of a few years, the total incomes of a stable near-poor family and a more comfortable family suffering a bout of acute poverty may be quite similar. Yet our public policies treat the two quite differently.

The stable near-poor are eligible for quite a range of transfer programs. SNAP eligibility extends to 130% of the federal poverty income guidelines.<sup>89</sup> Pregnant women and young children have long been eligible for Medicaid at even higher levels.<sup>90</sup> Supplemental Security Income (SSI) eligibility for certain families containing multiple children with severe disabilities also continues well above the poverty line.<sup>91</sup> The Earned Income Tax Credit (EITC) can extend past twice the poverty line.<sup>92</sup> Housing programs, too, have had their eligibility limits raised well

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79. *Id.* at 11.

80. *Id.* at 213–24.

81. *Id.* at 224–25.

82. FRANCES FOX PIVEN & RICHARD A. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE 34–38 (1971).

83. *Id.* at 345–48.

84. *Id.* at 330–38.

85. MICHAEL HARRINGTON, THE OTHER AMERICA: POVERTY IN THE UNITED STATES 86–87 (1962).

86. *Id.* at 176–84.

87. *Id.* at 176.

88. *Id.* at 167–68.

89. 7 U.S.C. § 2014(c)(2) (2018).

90. 42 U.S.C. § 1396a(f) (2018).

91. *See* 20 C.F.R. § 416.1165 (2018) (establishing rules for counting parental income that can result in some families getting partial benefits well above the poverty income level).

92. CTR. ON BUDGET & POL’Y PRIORITIES, CHART BOOK: THE EARNED INCOME TAX CREDIT AND CHILD TAX CREDIT 7 (2016), <https://www.cbpp.org/sites/default/files/atoms/files/1-7-15tax-chartbook.pdf> [<https://perma.cc/UPX5-Y8LZ>].

above the poverty line in most of the country.<sup>93</sup> The acute poor, by contrast, are commonly unable to qualify for benefits through a combination of deliberate and accidental policies.

Understanding our treatment of the acute poor is important in its own right. They experience a great deal of preventable hardship. Alleviating that hardship should be relatively affordable fiscally, and the greater sympathy they enjoy across much of the political spectrum should immunize such initiatives from the worst of the vitriol often directed at efforts to combat chronic poverty. Improving treatment of the acute poor ought to be as close to “low-hanging fruit” as the world of anti-poverty policy has to offer. The coronavirus pandemic and resulting recession are highlighting the suffering of many of the acutely poor while laying bare the extent of their economic insecurity even before the crisis.

Understanding the treatment of the acute poor also provides valuable insights into how we treat the chronic poor—and why we do so. Many of the acute poor’s difficulties result from displaced hostility to the chronic poor. Conversely, middle-class voters may recognize the unfairness of rules denying aid to the chronic poor more easily when they see those rules’ impact on the acute poor.

The habit of equating income with class breaks down with respect to the acute poor, whose incomes may be low but whose experiences and attitudes may be much more middle-class. Seeing income and class separately should yield important insights: if we are generous with the more middle-class acute poor, then we can more plausibly see this country’s harsh treatment of the chronic poor as reflecting class antagonism (and the electorate’s hostility toward the behaviors it has been told predominate among low-class chronic poor people). If, on the other hand, we are comparably harsh to the acute and chronic poor, we must face the fact that we are not as generous a nation as we like to claim.

Politically, the acute poor provide a natural social and political bridge between the chronic poor and middle-class voters. Having experienced something more similar to chronic poverty than most of their middle- and upper-income friends can readily imagine, they have the potential to be voices of tolerance and empathy, just as friends and relatives of openly lesbian, gay, bisexual, transgender, and queer people have helped radically reduce homophobia in U.S. society over the course of just a couple of decades.

In the broader political arena, sympathy for the acute poor can leaven our treatment of the chronic poor. Just as Professor Derrick Bell argued that people of color’s interests advance best when those interests coincide best with those of white people, low-income people’s interests advance best when aligned with those of

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93. See BARRY L. STEFFEN ET AL., U.S. DEP’T OF HOUS. & URBAN DEV., WORST CASE HOUSING NEEDS: 2015 REPORT TO CONGRESS 3, 63 (2015) (explaining that 30% of area median income is typically below the federal poverty income guideline, with most housing aid programs granting eligibility well above that level).

middle-class voters.<sup>94</sup> The seeming otherness of beneficiaries of social welfare programs has repeatedly undermined them politically. Most dramatically, after President Reagan removed many of the working poor from food stamps and particularly AFDC by arguing that aid should target the “truly needy,” House Speaker Newt Gingrich successfully cited the absence of working recipients as evidence that AFDC was feeding social pathology and should be eliminated altogether.

One approach to this historically has been promoting universal (i.e., non-means-tested) social insurance programs such as Social Security, Medicare, and unemployment compensation (UC). In theory, acute poverty ought to be an event that is highly susceptible to insurance, perhaps even more easily than chronic poverty due to old-age or disability. This country, however, has long been ambivalent about social insurance.<sup>95</sup> We still have not recovered from the folly of making employers primarily responsible for providing health insurance, and we have extended the same privatizing impulse to several key causes of acute poverty.<sup>96</sup> Workers’ compensation and UC are both employer-funded on terms that give employers strong incentives to lobby for more restrictive coverage. Yet despite the presence of insurance schemes nominally covering two of the most sympathetic causes of acute poverty—workplace injuries and faultless layoffs—gathering support for a social insurance program for other causes, or a generic one that transcends particular causes, has proven impossible.<sup>97</sup> Indeed, even those two programs face increasing attacks.<sup>98</sup>

Another response of anti-poverty advocates has been to expand universal transfer programs that are not regarded as social insurance, such as school meals and the child tax credit (a modest U.S. analogue to the children’s allowance in some

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94. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518 (1980). *But see* Justin Driver, *Rethinking the Interest-Convergence Thesis*, 105 NW. U. L. REV. 149 (2015) (acknowledging convergence theory’s contributions but finding significant analytical flaws in its treatment of race relations).

95. A quarter-century ago, Gosta Esping-Andersen suggested a useful typology of social welfare systems. Each of these grew, in different ways, out of primitive poor relief programs. The United States adheres to the liberal model, characterized by relatively weak universal programs and strong reliance on means-tested public benefits closely controlled to minimize adverse effects on market discipline. GOSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* 26–29 (1990). The other two models, corporatist and social democratic, predominate in Europe, worry far less about disrupting markets, and provide much more robust universal social rights and benefits. *Id.* When someone becomes acutely poor in such a society, many more of her or his basic needs are likely covered by social insurance, reducing both hardship and social disruption.

96. *See* David A. Super, *Privatization, Policy Paralysis, and the Poor*, 96 CALIF. L. REV. 393 (2008) (dissecting the impulses behind the calls for human services privatization).

97. Bernie D. Jones, *Privately Funded Family Medical Leave?*, 35 N. ILL. U. L. REV. 119 (2014) (discussing failure to win paid leave for workers responding to family emergencies).

98. *See, e.g.*, The Associated Press, *Gov. Rick Snyder Signs Bills Lowering Worker Benefits, Costs*, MLIVE (Dec. 20, 2011), [https://www.mlive.com/politics/2011/12/gov\\_rick\\_snyder\\_signs\\_bills\\_lo.html](https://www.mlive.com/politics/2011/12/gov_rick_snyder_signs_bills_lo.html) [<https://perma.cc/FH2C-NSTF>].

European countries).<sup>99</sup> But serving the entire population is extremely expensive, and for most potential improvements in human services the political drag that higher cost brings more than offsets any broadened support. Serving the acute poor in programs that primarily benefit the chronic poor, by contrast, is much more affordable while still offering opportunities to burnish the program's image with middle-class voters.

The coronavirus pandemic has painfully laid bare this country's failure to develop effective means of aiding the acute poor. Tens of millions of people who thought themselves to be economically stable in January are suddenly destitute in April.<sup>100</sup> Some conservatives insisted on seeing response to the pandemic through the incentive-based lens that dominates policy on chronic poverty: even as governors were asking non-essential businesses to close and workers to stay home, they told Congress “[d]on’t expand welfare and other income redistribution benefits like paid leave and unemployment benefits that will inhibit growth and discourage work.”<sup>101</sup>

Even when a consensus formed to help the newly unemployed, it found the available programs ill-suited to the task. Congress suspended the three-month time limit on unemployed people's eligibility for food assistance,<sup>102</sup> but with many intermittent workers having already been terminated from the program it is unclear how many would realize that they were again eligible. Congress increased unemployment compensation benefits and broadened eligibility to include many workers in the “gig economy,”<sup>103</sup> but insufficient agency staffing,<sup>104</sup> prior efforts to make benefits less accessible,<sup>105</sup> and the requirement that recipients be actively seeking work<sup>106</sup> threatened to leave many of the newly unemployed destitute. And

99. See ALFRED J. KAHN & SHEILA B. KAMERMAN, *NOT FOR THE POOR ALONE: EUROPEAN SOCIAL SERVICES* (1975).

100. See CTR. ON BUDGET & POL'Y PRIORITIES, *STATES START GRAPPLING WITH HIT TO TAX COLLECTIONS* (2020), <https://www.cbpp.org/sites/default/files/atoms/files/4-2-20sfp.pdf> [<https://perma.cc/5V3V-T6G3>].

101. Amanda Terkel, *Conservatives Worry Too Much Coronavirus Relief Will Make People Lazy*, HUFFINGTON POST (Mar. 17, 2020), [https://www.huffpost.com/entry/ron-johnson-coronavirus-relief\\_n\\_5e710d60c5b60fb69ddf3bf1](https://www.huffpost.com/entry/ron-johnson-coronavirus-relief_n_5e710d60c5b60fb69ddf3bf1) [<https://perma.cc/9UZG-42NK>].

102. Families First Coronavirus Response Act, Pub. L. No. 116-127, § 2301, 134 Stat. 178 (2020) (codified at 7 U.S.C. § 2011 note).

103. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, §§ 2102–2116 (2020) (codified in scattered sections of 42 U.S.C.).

104. See, e.g., William Sanders, *State Working Through Backlog of Unemployment Claims*, ARK. DEMOCRAT-GAZETTE (Mar. 28, 2020, 2:56 PM), <https://www.arkansasonline.com/news/2020/mar/28/state-working-through-backlog-unemployment-claims/?news-arkansas> [<https://perma.cc/75LE-PGHJ>].

105. Gary Fineout & Marc Caputo, *Republicans Rage as Florida Becomes a Nightmare for Trump*, POLITICO (Apr. 3, 2020, 5:02 AM), <https://www.politico.com/states/florida/story/2020/04/03/its-a-sh-sandwich-republicans-rage-as-florida-becomes-a-nightmare-for-trump-1271172> [<https://perma.cc/J94N-BM24>].

106. See Ryan Suppe, *Dept. of Labor: Unemployment Claims Up 1,200%, Largest One-Week Increase Ever*, POST REGISTER (Mar. 26, 2020), <https://www.postregister.com/coronavirus/dept-of->



when Congress provided for emergency relief checks to tide the newly unemployed through the period of social distancing, it based eligibility on income for 2018 or 2019, which may have borne little resemblance to workers' current circumstances.<sup>107</sup> Although some states reopened health care plan enrollment,<sup>108</sup> the federal government declined to do so<sup>109</sup> in the majority of the country where it operates health care exchanges.<sup>110</sup> This developing tragedy demonstrates that the country possesses neither the conceptual nor the institutional tools to address acute poverty effectively.

This Article explores how the two-prong model of anti-poverty law fails the acute poor. Part I surveys the surprisingly sparse information we have about acute poverty, including its causes, its extent, the ways in which the acute poor diverge from images we have of the chronic poor, and our political system's complex and inconsistent reaction to acute poverty. Ironically, by excluding the economically insecure from both social insurance and means-tested programs, we have narrowed those programs' political support, leaving them highly vulnerable. Part II shows how the dominant model of anti-poverty law fails the acute poor, sometimes by design and sometimes by indifference. It also describes pending proposals that would double down on those failures. Part III explores what principles ought to guide a more robust response to acute poverty. In concluding, the Article briefly considers how addressing acute poverty fits into the broader concerns about social justice.

This Article does not contend that the problems of the acute poor are more severe, or deserving of greater sympathy, than those of the chronic poor. Copious research demonstrates that the ill effects of poverty are cumulative, and as traumatic as the acute poor's descent into poverty will be, the chronic poor have experienced that and much more already. The suffering of the acute poor, however, is real, is serious, and is deserving of the attention of compassionate people. Moreover, in the odd mix of power politics, symbolic politics, and sympathy politics that shapes this country's anti-poverty policy,<sup>111</sup> a broader understanding of the acute poor's travails

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labor-unemployment-claims-up-largest-one-week-increase/article\_cc71c0e6-101e-520f-87ca-30439185ccdc.html [https://perma.cc/Q6TG-4L42].

107. Coronavirus Aid, Relief, and Economic Security Act § 2301.

108. Mary Ellen McIntire & Lauren Clason, *States Reopen Insurance Enrollment as Coronavirus Spreads*, ROLL CALL (Mar. 13, 2020, 4:00 PM), <https://www.rollcall.com/2020/03/13/states-reopen-insurance-enrollment-as-coronavirus-spreads/> [https://perma.cc/VBU3-MQKP].

109. Susannah Luthi, *Trump Rejects Obamacare Special Enrollment Period Amid Pandemic*, POLITICO (Mar. 31, 2020, 6:11 PM), <https://www.politico.com/news/2020/03/31/trump-obamacare-coronavirus-157788> [https://perma.cc/WK5X-34Q9].

110. Ctr. for Consumer Info. & Ins. Oversight, *State-Based Exchanges*, CMS.GOV, <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/state-marketplaces> [https://perma.cc/8SAC-E4H3] (last visited April 2, 2020) (reporting that in November 2019, the federal government operated health insurance exchanges for thirty-two states).

111. See David A. Super, *Protecting Civil Rights in the Shadows*, 123 YALE L.J. 2806 (2014) (arguing that low-income people are rarely effective participants in power politics and depend on the ethical sensibility of a handful of officials across the ideological spectrum).

can both undermine toxic symbolism and broaden the sympathy needed to improve programs' treatment of all low-income people.

### I. UNDERSTANDING ACUTE POVERTY

Social policy focuses heavily on individuals and families with incomes so low that they consistently have difficulty obtaining life's basic necessities. On the other hand, policymakers are comfortable setting aside those with incomes providing consistent security. Between these two groups lie two other sets of people. One group—those with stable incomes modestly above the poverty line, the stable near-poor—get significant attention. They may receive reduced-price school meals, modest earned income tax credits, limited subsidies to help them purchase health insurance, and other partial benefits. The other group—those that are usually somewhat above the poverty line but occasionally suffer serious reverses—is all but invisible. At most, they may be mistaken for the comfortable when their incomes are high and for the chronic poor when their incomes are low, but their circumstances and needs are quite different from both of these groups.

This Part seeks better to understand the acute poor, particularly during their times of need.

#### *A. The Extent of Acute Poverty*

Because social scientists overwhelmingly have focused on the chronic poor, remarkably little useful data exists on the acute poor. Their presence was known anecdotally and could be inferred from the relatively low median spells of participation in cash assistance programs and SNAP.<sup>112</sup> “Relatively few families are immune to the possibility and economic consequences of a bout of unemployment or the departure of death of a spouse.”<sup>113</sup> Acute poverty is disproportionately high in the U.S. compared with other affluent nations.<sup>114</sup>

A simplistic measure of the extent of acute poverty would be to compare the number of people the Census Bureau reports to be living below the poverty line in the peak year of an economic expansion with the number in annual poverty once the ensuing recession has had its full effect. Thus, the 36.5 million poor people in 2006 had risen to 46.3 million by 2010.<sup>115</sup> Controlling for population growth, the

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112. See JOSHUA LEFTIN ET AL., U.S. DEP'T OF AGRIC., AG-3198-C-13-0007, DYNAMICS OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM PARTICIPATION FROM 2008 TO 2012, at 152 (2014) (finding median spell of participation at twelve months, with shorter medians for households not containing elderly members or persons with disabilities).

113. Greg J. Duncan et al., *Poverty and Social Assistance Dynamics in the United States, Canada, and Europe*, in POVERTY, INEQUALITY, AND THE FUTURE OF SOCIAL POLICY: WESTERN STATES AND THE NEW WORLD ORDER 88 (Katherine McFate et al. eds., 1995).

114. Markus Jäntti, *Mobility in the United States in Comparative Perspective*, in CHANGING POVERTY, CHANGING POLICIES 186–87 (Maria Cancian & Sheldon Danziger eds., 2009).

115. CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR, U.S. CENSUS BUREAU, P60-252, INCOME AND POVERTY IN THE UNITED STATES: 2014, at 12 fig.4 (2015) [DENAVAS-WALT & PROCTOR, INCOME AND POVERTY IN THE UNITED STATES: 2014].

number of people living in poverty in 2010 was 8.7 million greater than it would have been had the poverty rate remained what it was in 2006.

This measure is flawed in several respects. Most obviously, it only addresses one of many causes of acute poverty, albeit an important one. It says nothing about acute poverty brought on by natural disasters, by economic changes not tied to the national business cycle, or by personal calamities. It also says nothing about the duration of the spells of poverty experienced in either group: someone living at almost twice the poverty line for half the year and having no income at all for the other half is indistinguishable from someone with a steady income just below the poverty line for the entire year. If one believes that these two experiences are likely to be quite different and to call for different public policy responses, one needs a measure that differentiates between the two. In addition, the same triggers, such as a recession, can cause some people to experience acute poverty while launching others into spells of chronic poverty. In part because of this, the poverty rate often continues to rise a year or more after a recession has officially ended and then declines more slowly than unemployment and other measures of economic distress.<sup>116</sup>

More insight is available from studies comparing the number of people below the poverty line for a single year with those that have multi-year spells of poverty. Several studies have found that the number of people experiencing at least one year of poverty over a several-year period is several times the number consistently poor during that period.<sup>117</sup> Nonetheless, acute poverty commonly recurs across someone's lifetime. More than three-quarters of those experiencing one year of poverty will experience another at some point in their lives; half will experience five or more such years.<sup>118</sup>

Indeed, a study of a representative sample of adults during the years of 1968 through 1992 found that more than half had lived below the poverty line for at least one year.<sup>119</sup> Almost 85% of African-Americans have spent at least one year in poverty before they reach age sixty-five.<sup>120</sup> With so many people experiencing poverty, we should seek to learn how frequent such bouts of poverty are at any given time.

Yet people do not eat, meet rent or mortgage obligations, or pay utility bills annually. Spells of poverty that do not last long enough to pull them below the poverty line for an entire year may nonetheless be quite devastating. The Census Bureau recently has begun releasing tables on individuals and families that were

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116. *See id.*

117. Sara Kimberlin & Jill Duerr Berrick, *Poor for How Long? Chronic Versus Transient Child Poverty in the United States*, in THEORETICAL AND EMPIRICAL INSIGHTS INTO CHILD AND FAMILY POVERTY 143 (Elizabeth Fernandez et al. eds., 2015).

118. MARK ROBERT RANK, ONE NATION, UNDERPRIVILEGED: WHY AMERICAN POVERTY AFFECTS US ALL 92–95 (2004).

119. Kimberlin & Berrick, *supra* note 117, at 142–43.

120. *Id.*

poor for periods of two months or more to complement its traditional presentations of families that were in poverty over an entire year.<sup>121</sup> Comparing these two groups is problematic: the chronic poor are among those with spells of at least two months, and some of the acute poor have their incomes drop far enough and long enough to fall beneath the poverty line for an entire year. Nonetheless, the differences between these two groups are instructive. Between 2009 and 2011, some 89.6 million people suffered at least one episode of poverty lasting two months or more. That is more than twice the average 40.5 million the same survey recorded as living below the poverty line on an annual basis during that period.<sup>122</sup> More than one-quarter of those who were poor during the first month of the period were poor for the entire thirty-six months, yet these constituted only 11% of the total number experiencing poverty for at least two months during the three years.<sup>123</sup>

Acute poverty can be transitory indeed. More than half of all bouts of poverty last four months or less.<sup>124</sup> Almost four out of five bouts have ended within a year.<sup>125</sup>

Of course, not all people who become acutely poor will do so with the same frequency or for the same periods of time. In addition to being much less likely to experience poverty in their first ten years of life, white children who do become poor are far more likely than children of color to experience no more than three years of poverty during that time.<sup>126</sup> Among those in poverty, a far higher proportion of whites are acutely poor relative to African-Americans.<sup>127</sup> More broadly, the acutely poor's characteristics are far more like those of the general population.<sup>128</sup>

Research comparing those below the poverty line for at least two months during the boom years of 1996 to 1999 with those that were poor for all months during those years is instructive. The former group was predominately the acute; the latter were solely the chronic poor.<sup>129</sup> Among the total group, the poverty rate

121. ASHLEY N. EDWARDS, U.S. CENSUS BUREAU, P70-137, DYNAMICS OF ECONOMIC WELL-BEING: POVERTY, 2009–2011 (2014).

122. The official estimate of persons living in poverty each year is derived from the Census Bureau's Current Population Survey, which collects only annual data. See DENAVAS-WALT & PROCTOR, INCOME AND POVERTY IN THE UNITED STATES: 2014, *supra* note 115, at 1. To determine how many were poor for shorter periods, the Census Bureau relied on its Survey of Income and Program Participation (SIPP), which returns to the same families for updates each month. See *id.* The difference between the two surveys accounts for the modest differences in estimates of the number of people living in annual poverty.

123. EDWARDS, *supra* note 121.

124. Jäntti, *supra* note 114, at 185 fig.7.1.

125. *Id.*

126. William H. Scarborough, *Who Are the Poor? A Demographic Perspective*, in CHILD POVERTY AND PUBLIC POLICY 82 fig.3.4 (Judith A. Chafel ed., 1993).

127. GREG J. DUNCAN, YEARS OF POVERTY, YEARS OF PLENTY 48–52 (1984).

128. *Id.* at 48–49.

129. Some 19.5% of the total population was poor for at least two months during those four years; only 2.0% were poor for all of those months. Thus, the latter group was barely one-tenth of the former. Jäntti, *supra* note 114, at 183 tbl.7.2. To be sure, a substantial number of the chronic poor have

among people of color was about two-and-a-half times that of non-Hispanic whites, but more than five times as many African-Americans and Latinos/Latinas were chronically poor.<sup>130</sup> The rate at which suburbanites experienced acute poverty was modestly lower than the national average, while the rate at which they experienced chronic poverty was just over half of the overall average.<sup>131</sup> Working age people experience acute poverty at a rate close to the national average but are much less likely to experience chronic poverty.<sup>132</sup> Married couples experience about two-third the national rate of acute poverty but less than one-third the rate of acute poverty.<sup>133</sup>

*B. The Causes and Nature of Acute Poverty*

The federal poverty level today is derived from a measure of the cost of food half a century ago and adjusted for inflation. It has long been subject to harsh criticism, including from the Census Bureau itself, for inadequately measuring the extent of hardship experienced by financially pressed families.<sup>134</sup> A major study by the National Academy of Sciences urged that the measure take into account both non-cash benefits, such as federal food and housing assistance, and the actual expenses low-income households are likely to face.<sup>135</sup> Applying this same principle—that poverty is the result of a mismatch between practically inescapable expenses and household income—would suggest that families with incomes well above the poverty line that suffer unusually heavy expenses should be considered poor. Thus, those facing sudden, expensive medical crises or the need to replace a vehicle depended upon to commute to work and obtain basic necessities might be acutely poor. For the most part, however, anti-poverty programs make little allowance for the effects of such expenses on claimants' ability to afford the basic necessities.

On the other hand, those with substantial assets may not experience hardship during gaps in their incomes, even if their expenses rise. Donald Trump, for example, is showing no distress despite his sharply negative cash flow as he runs for president. Anti-poverty programs generally take one of two extreme approaches to assets: either ignoring them altogether for administrative simplicity or disqualifying claimants completely based on possession of relatively paltry levels of assets.

Even defining poverty solely as a shortage of income, however, a very large number of otherwise middle-income families experience bouts of acute poverty

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an occasional month above the poverty line and would not be in the latter group, but the acute poor still heavily outnumber the chronic poor and hence overwhelmingly determine the characteristics of the former group.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *See, e.g.*, KATHLEEN SHORT, U.S. CENSUS BUREAU, P60-251, THE SUPPLEMENTAL POVERTY MEASURE: 2013, at 1 (2014); DUNCAN, *supra* note 127, at 36–37.

135. NAT'L RESEARCH COUNCIL, MEASURING POVERTY: A NEW APPROACH (Constance F. Citro & Robert T. Michael eds., National Academy Press 1995).

during the course of a year, with many more doing so at least once within a span of a few years. And many of these families lack the assets to tide them over without material hardship and loss of security.<sup>136</sup>

### *1. Triggers of Acute Poverty*

Individuals and families fall into acute poverty for a wide range of reasons, from the highly specific to the broadly systemic. The cause of a bout of poverty often has a significant effect on how policymakers and the general public view it and on the availability of anti-poverty programs to ease the hardship.

#### *a. Mass Disasters*

The most visible cause of acute poverty is a mass disaster. This could be a major natural disaster, such as Hurricane Katrina, massive regional flooding, or a powerful earthquake. It also could be an economic disaster, typically a recession. The coronavirus pandemic is simultaneously an extreme mass casualty event with staggering direct costs and an extreme economic downturn. And, in the future, we may expect to see more environmental disasters, such as the BP oil spill in the Gulf of Mexico or various effects of climate change. These events disrupt economic activity over a wide area, destroying the means of production or forcing workers to relocate away from it.

Initially, the public tends to feel strong empathy for disaster victims. Fairly rapidly, however, the public's attention wanders off. Indeed, before very long the once-fawning news media starts to run stories casting the acute poor in a bad light: looters in disaster areas (who almost always turn out not to be from the affected area), homeowners or farmers facing dispossession who had vastly over-extended themselves financially, discouraged workers no longer seeking employment, and the like. The public then becomes impatient with the acute poor for not getting back on their feet more expeditiously. As the old political cartoon says, 8% unemployment is acceptable to 92% of workers.

#### *b. Localized Disasters*

Many natural disasters too small to garner national attention nonetheless can do considerable damage in a local area. Even if tornados have far less destructive power than hurricanes, if they knock out major local employers, they can still cause a sharp rise in acute poverty among the displaced workers and those that depend on them. When those workers stop spending, local retailers and service providers lay off their own employees, compounding the problem. Floods that destroy housing may force their residents to move away from their jobs for long enough to lose them.

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136. Jäntti, *supra* note 114, at 181.

Similarly, even when the national economy seems to be doing quite well, particular employers may encounter financial problems and have to close or shed workers. Others may merge with competitors and lay off newly redundant workers or move to other parts of the country or overseas. Where the employer dominates a particular community's labor market, the result may be chronic poverty until a replacement employer arrives or enough laid-off workers move to other areas. But even in areas with more robust employment markets, several months of poverty may result before the worker gets re-employed.

Here, too, disasters can beget more disasters. The Great Recession was caused by problems in the housing market but then exacerbated those problems as laid-off workers were unable to keep up payments on their mortgages. At the time, conventional wisdom was that the nation had a glut of housing, with property values dropping precipitously as a huge bubble deflated. With so many homes becoming vacant at a time when few families had the financial latitude to buy, foreclosing lenders needed to convert that housing to rentals quickly to prevent its decay. In many parts of the country with high rates of foreclosures, lenders failed to rise to that challenge and allowed much of their foreclosed inventory to fall out of the housing market. Increasing household formation with the recovering economy and natural population growth has outstripped new construction and the return of foreclosed houses to the market. As a result, a number of areas now have sharply rising rents for low- and modest-cost housing.<sup>137</sup>

*c. Individual Causes*

Although major, attention-grabbing social disasters cause considerable acute poverty, by far, the majority of instances have much more individualistic causes. Illnesses and injuries temporarily prevent people from working. Family members' illnesses or injuries, or the disappearance or incapacitation of other caregivers, force workers to leave jobs. So do collapses in childcare arrangements or breakdowns of vehicles or carpools relied upon to get to work. Workers are fired or laid off and are part of the large and growing segment of the jobless that the unemployment compensation system does not cover.

Domestic violence can often cause acute poverty.<sup>138</sup> Whether a violence-driven break-up leaves the family in chronic poverty—or results in a cycle of reunions and splits with repeated episodes of acute poverty—often depends on the availability of supports for the survivor.<sup>139</sup> That being said, although politicians and social scientists emphasize family break-ups as a cause of poverty, data suggests

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137. ALLISON CHARETTE ET AL., JOINT CTR. FOR HOUS. STUDIES & ENTER. CMTY. PARTNERS, PROJECTING TRENDS IN SEVERELY COST-BURDENED RENTERS: 2015–2025 (2015).

138. See Christine C. George, *Welfare Reform and the Safety Needs of Battered Women*, in *THE PROMISE OF WELFARE REFORM: POLITICAL RHETORIC AND THE REALITY OF POVERTY IN THE TWENTY-FIRST CENTURY* 193, 193–95 (Keith M. Kilty & Elizabeth A. Segal eds., 2006).

139. *Id.* at 195–98.

that some families composed of adults with limited skills would have been poor even had they stayed together.<sup>140</sup>

Involvements with the criminal justice system or immigration enforcement may cause a worker to be incarcerated long enough to lose employment, even if the ultimate resolution is favorable. The stigma of having been locked up also can complicate finding replacement employment or force the worker to take a job paying less than she or he was accustomed to making. Relatives of someone arrested may see their finances disrupted when they post bail, contract on abusive terms with a private bail-bond company to do so,<sup>141</sup> or travel to distant facilities for visits.

Family financial crises can start a self-reinforcing downward spiral. When the sudden need to repair a home, or to pay a medical debt, strains the family's resources, it may be unable to pay timely for childcare or routine car repair, causing a sudden inability to attend work. Family financial crises also can result in evictions, absorb a worker's attention and possibly land the family much farther from her or his job. When a shock to the family's finances results in a utility shut-off, the worker may be unable to maintain the personal appearance her or his employer demands.

## 2. *How the Acute Poor Are Different*

The acute poor are a large and diverse group—as, indeed, are the chronic poor. Identifying systematic differences between the two groups therefore is inherently problematic. Nonetheless, the acute poor are more likely to have certain characteristics than are the chronic poor. These characteristics may have important policy consequences for the design and administration of anti-poverty programs. These differences also, as discussed below, have important political consequences.<sup>142</sup>

First, the circumstances of the acute poor are likely to be more volatile. They have already suffered a change for the worse; many are likely to be able to reverse that misfortune relatively soon while others may slip further into poverty. This volatility makes determinations of need based on information from earlier periods highly problematic: the challenges they are suffering today may not have begun to manifest then, and by the time some programs register their current hardships they may no longer need aid.

Second, they are likely to have far less experience coping both with poverty and with the bureaucracy administering government aid programs than the chronic poor. This inexperience, or excessive optimism about the speed with which they will return to relative prosperity, may cause them to make serious mistakes compounding their problems, such as failing to curtail spending sufficiently rapidly

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140. Mary Jo Bane, *Politics and Policies of the Feminization of Poverty*, in *THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES* 381, 384 (Margaret Weir et al. eds., 1988).

141. See Shaila Dewan, *Court by Court, Lawyers Fight Policies That Fall Heavily on the Poor*, *N.Y. TIMES* (Oct. 23, 2015), <https://www.nytimes.com/2015/10/24/us/court-by-court-lawyers-fight-practices-that-punish-the-poor.html> [<https://perma.cc/G36U-NBHM>].

142. See *infra* Section I.D.



or paying bills that are not tied to basic necessities. Administrative processes, too, that largely work for the chronic poor—not because those processes are clear but just because they are familiar—may lead to high rates of procedural denials when applied to the acute poor.

Third, income-based measures of need may produce less precise measures of their circumstances. The chronic poor are likely to have long-ago exhausted reserves of spare food and wearable clothing, as well as the patience of creditors and the generosity of friends and family. For them, income directly determines what they may consume. Acutely poor individuals may be in a similar position—or may have significant reserves left to tap. Similarly, the acute poor may be contractually committed to relatively high monthly expenses—mortgage and car payments, cellphone and cable contracts, credit card debt, etc.—that sharply restrict the share of their incomes that are genuinely disposable while doing little to ameliorate their hardship.

Fourth, they commonly are spending substantial amounts of their time seeking both to ameliorate their conditions and to regain the level of income they previously enjoyed. Researching possible jobs, applying, and interviewing can consume a great deal of time and reduce their scheduling flexibility.

Fifth, the acute poor may resemble the non-poor more than they do the chronic poor both socially and vocationally. They are less likely to live in areas of concentrated poverty, they are more likely to have friends and close relatives living well above the poverty line, and they are more likely to have strong connections to the labor force. Of those poor for at least two months during 2009–2011, 53% were non-Hispanic whites compared with just 43% for the annual poor.<sup>143</sup> Some 62% of the two-month poor were of working age compared with 57% of the annually poor. The acute poor appear to be significantly better educated: when more of the acute poor are included, 34% have attended at least one year of college compared with just 25% of the annual poor. The broader group is somewhat more likely to be male, to live in a metropolitan area, and to have no disabilities affecting their ability to work. Some 27% of the larger group are married compared with 19% of the annual poor. And 47% of the larger group are employed (with 23% working full-time) compared with less than half as many among the annual poor. Other studies have confirmed that the chronic poor are more likely to be non-white, to have a head of household with a disability and without a high school diploma, and to live in a female-headed family with children.<sup>144</sup>

Finally, the acute poor commonly do not know when or whether they will return to their former circumstances. Many of the chronic poor, by contrast, assume that their circumstances will not improve significantly in the foreseeable future and tend to plan accordingly. The acute poor's uncertainty about their prospects can cause them to make important mistakes, compounding their hardship. If they

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143. EDWARDS, *supra* note 121, at 21 tbl.A-4, 19 tbl.A-2.

144. Kimberlin & Berrick, *supra* note 117, at 144–50.

believe their poverty will be brief, they may take on large amounts of debt to tide themselves over. Should their optimism prove unfounded, they will face heavy debt service payments and a declining credit rating, which may adversely affect their ability to secure employment. Similarly, if they lean heavily on friends and family in the beginning, they may alienate and lose those resources should their hardship last longer than expected. If, however, they assume their reverse will be protracted, they may seek to “cut their losses” by giving up on homes in which they have substantial equity, suffering severe losses. Overestimating the severity of their predicament also could cause them to seize a low-paying position and lock themselves into a lower long-term earnings path.

### *C. The Consequences of Acute Poverty*

Although much has been written about the many and severe harms resulting from grinding chronic poverty, the harms of acute poverty have been far less carefully studied. To the extent the acute poor are considered at all, they are imagined to be a milder form of those suffered by the chronic poor. Some of the consequences of acute poverty do indeed resemble those that the chronic poor experience, although they are not necessarily distinguishable as milder. Others are distinctive results of the rapid fall from a different socioeconomic position.

The broader social harms of geographically concentrated chronic policy also are widely recognized. Temporal concentrations of acute poverty also can cause serious damage to important public policies.

#### *1. Individualized Harms*

Anyone with humanitarian concerns about the effects of poverty should care deeply about the acutely poor. Although its duration may make it appear far less harmful than chronic poverty, being thrust into poverty and powerlessness is a wrenching, traumatic experience likely to cause harm persisting long after the episode has passed.

##### *a. Economic Waste*

Sudden descents into poverty are likely to cause significant economic waste. Thus, the actual hardship resulting from an individual or family’s fall into poverty may be inadequately captured by the drop in income. Acute poverty can convert the life of an individual or family into one large fire sale.

Most items that the family might own—its home, motor vehicles, clothes, and other household goods—will sell for only a fraction of what they cost the household. The same is true of small businesses lost in a recession or natural disaster and of vehicles and other items household members ordinarily rely upon to make a living. Moreover, large amounts of personal property commonly are lost or damaged when a family is evicted or must move hurriedly. Acute poverty also can temporarily drive up the value of an individual’s time as she or he desperately seeks

the means to eat and to stave off eviction or utility shut-offs; this can drive choices that sacrifice long-term well-being, such as dropping out of training programs or missing time at a job that values attendance as a criteria for promotion. Finally, the acute poor may feel obliged to seek credit, which is commonly offered to them at effective interest rates that all but assure large debt service payments that squeeze out basic needs while failing to prevent the ultimate repossession of its collateral.

As a result, a family that spends most of its time at twice the poverty line but suffers occasional periods at half of the poverty line may have trouble maintaining the array of personal property that a stable near-poor family living can. Even without any redistribution across the income spectrum, a system that taxed such a family while it was in its usual, relatively solvent, condition to pay for benefits to cushion its fall during the periods of deprivation would enhance its welfare dramatically.

*b. Physical Harms*

A large body of research finds that patients forced to pay substantial out-of-pocket costs for health care make bad choices, particularly in times of economic distress. Although patients naturally have strong incentives to make sound choices on going to the doctor, purchasing medications, and the like, they lack both the knowledge and the emotional distance to do so correctly. Thus, when a family falls into acute poverty, its attempts to trim costs by foregoing prescribed medications or to reduce their dose below therapeutic levels may result in disastrous effects on their health. The false savings of, for example, halving anti-hypertensive or anti-seizure medications may result in both reduced health status for the individual and in far more expensive hospitalizations for the health care system. Similarly, the reticence of the uninsured to seek testing and treatment for the coronavirus has exacerbated the pandemic.<sup>145</sup> The same factors that can trigger bouts of acute poverty, such as pregnancy or illness, can render an individual more sensitive to the effects of a lack of basic necessities (as well as stress).<sup>146</sup>

Other cost-savings that desperate acute poor individuals and families may seek can be similarly shortsighted. Attempts to save on public transit or taxi fares by walking at night through dangerous areas can result in muggings. Saving money on smoke or carbon monoxide detectors or furnace maintenance causes numerous deaths each year. Families suddenly forced to find less expensive childcare arrangements before they have sufficient time to investigate the low-cost providers may rue the day.

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145. See Mark Kreidler, *We're Just Starting to See the Devastating Impact that COVID-19 Will Have on Poor Americans*, FAST COMPANY (Apr. 1, 2020), <https://www.fastcompany.com/90484562/were-just-starting-to-see-the-devastating-impact-that-covid-19-will-have-on-poor-americans> [https://perma.cc/U6VQ-DN6B].

146. Kimberlin & Berrick, *supra* note 117, at 152.

*c. Psychological Harms*

Falling into acute poverty, even for short periods of time, can cause severe psychological trauma, destroying the sense of security that is important for the well-being of adults and children alike. Parents' relationships with their children can suffer lasting damage. Having to go to school unbathed or in ill-fitting, worn-out, or dirty clothes can alienate a child from her or his peers on a lasting basis. And being unable to provide the basic necessities for children can humiliate and depress parents. The sense of powerlessness resulting from sudden destitution can lead to depression and listlessness. And the increased financial stress breaks up numerous marriages. Although studies have shown greater impacts of children's psychological and intellectual development from chronic poverty, they have found significant effects for acute poverty as well.<sup>147</sup>

*2. Undermining Public Policy*

Quite apart from its individual effects, acute poverty so severely threatens important public policies that our current, lackadaisical response to it is quite surprising. That indifference is certainly shortsighted.

*a. Increasing Chronic Poverty*

Episodes of acute poverty pose a serious if underappreciated risk of undermining public policies aimed at eradicating chronic poverty. The hardships of acute poverty can increase the risk that a family will fall into chronic poverty. This can happen in several ways. The reverse can demoralize the family, resulting in decreased efforts to find employment and depressed performances in job interviews. It can cause couples to split up, increasing all family members' chances of falling into chronic poverty. The loss of income can cause the family to fall behind on its bills, harming its credit rating. With increasing numbers of employers checking credit reports of job applicants, this can harm the family's long-term prospects.

Perhaps most fundamentally, the harms associated with acute poverty may be sufficiently severe to cause some low-skilled people to prefer chronic poverty. In their landmark study of the choices that low-skilled single mothers make, Kathryn Edin and Laura Lein found that many of those staying on welfare rather than seeking employment did so because they despaired of social programs' treatment of the acute poor. They reported that, once laid off from a job, it would take several months to reinstate their cash assistance and food stamps, during which time they and their children would face extreme hardship.<sup>148</sup> Being realistic about the limits of the job market's demand for their skills, they concluded that they had little hope of leaving poverty completely; their only real choice was between chronic poverty

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147. *Id.* at 152–53.

148. EDIN & LEIN, *supra* note 55, at 68–69.

and a still austere existence modestly above the poverty line punctuated by periods of acute poverty. Because they believed that the severity of the hardships during those bouts of acute poverty would be more severe than the effects of chronic poverty, they chose the latter.<sup>149</sup>

*b. Damaging the Macroeconomy*

Acute poverty can cause serious consequences for the national economy. People suddenly having their incomes plummet are likely to radically cut back on their spending. If replicated across a large number of individuals and families, this can significantly reduce aggregate demand. Depressed demand is likely to cause businesses to trim their labor forces to match diminished revenues. Those reductions in employment, in turn, are likely to plunge more people into acute poverty, reinforcing the destructive cycle. This is the classic problem in macroeconomic policy that John Maynard Keynes and others sought to address during the Great Depression and that their followers have highlighted ever since.

Partially in response to Keynesian economics, anti-poverty programs such as UC and the Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) seek to aid the acute poor, stabilize aggregate demand, and cushion economic slumps. As discussed below, however, these programs are sharply limited in their effectiveness in aiding the acute poor and stabilizing a depressed economy.

Although all low-income people face intense pressure to limit their spending, the acute poor's hardships are particularly likely to threaten macroeconomic health for two reasons. First, because they had been spending more prior to the reverses they suffered, their vendors and the economy as a whole will have been counting on those funds.

Second, their prior prosperity was likely to induce lenders to offer, and them to accept, more credit than the chronic poor receive. By contrast, many of the chronic poor's creditors are involuntary ones—unpaid landlords, utility companies, and the like—who likely budgeted for a certain rate of default when they went into that line of business. The acute poor often will be at risk of defaulting on the same kinds of debt but may have other, more extensive, debts. If they prioritize those obligations, their actual purchases of goods and services may decline by a higher percentage than their incomes do, accelerating the deflationary effects on the overall economy. This sort of debt deflation, characterized by too many people trying to pay down debt while too few have the courage to increase their leverage, was a major factor in the Great Depression and has been an important contributor to the three most recent U.S. recessions and seems likely to be so again in the coronavirus recession.

The macroeconomic effects of acute poverty are likely to be greater for victims of mass disasters because larger numbers will be reducing their spending at once.

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149. *Id.* at 68-69.

Even those becoming acutely poor for local or individualized reasons, however, can contribute to the drag on an already weak economy.

#### *D. The Politics of Acute Poverty*

The politics of chronic poverty in the United States are exceedingly complex. Many supporters of the chronic poor have strong ulterior motives;<sup>150</sup> the same is also true of many of their critics.<sup>151</sup> The electorate is hostile to most existing anti-poverty programs yet also overwhelmingly says we should do more for the poor, even if doing so would require raising taxes.<sup>152</sup> Although some have tried to fit low-income people into one of the major partisan coalitions, this has proved disastrous for several reasons.<sup>153</sup> Low-income people lack the clear identity and effective means of communication required to wield political influence, and the numbers of votes that politicians can gain by attacking the chronic poor commonly exceeds the number won by helping them. The chronic poor have fared best when a handful of politicians from across the ideological spectrum have come to see their needs as moral imperatives and acted together quietly.<sup>154</sup>

The politics of acute poverty are quite different, but also complicated. At their heart is a striking paradox: policymakers, advocates, and scholars across the political spectrum valorize the acute poor, yet all permit their overwhelming focus on the chronic poor to lead them to embrace policies that compound the woes of the acute poor. This arguably is a consequence of the strong desire to maintain discipline among recipients of public benefits—a desire largely motivated by concerns about the chronic poor.<sup>155</sup>

##### *1. Aspirational Politics*

Across the ideological spectrum, politicians deem the acute poor to be far more palatable than the chronic poor. Indeed, the acute poor often seem to typify many policymakers' notion of the "worthy poor." Part of this clearly can be traced

150. The Hudson Institute's Christopher DeMuth notes that a large proportion of anti-poverty spending does not go directly to low-income people, but rather to more affluent service providers, such as doctors, nursing homes, and social workers. FEDERALIST SOC'Y, Comment in *The Safety Net & Poverty [Panel]*, YOUTUBE (Feb. 27, 2016), <https://www.youtube.com/watch?v=FcV-DC1CIXo> [<https://perma.cc/NZ3U-VDAM>].

151. See, e.g., KATZ, IN THE SHADOW OF THE POORHOUSE, *supra* note 54, at 278–80 (seeing criticism of anti-poverty programs as an excuse to cut taxes on the affluent).

152. MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY 27–30 (1999); LESLIE MCCALL, THE UNDESERVING RICH: AMERICAN BELIEFS ABOUT INEQUALITY, OPPORTUNITY, AND REDISTRIBUTION 193–209 (2013).

153. See Super, *Protecting Civil Rights in the Shadows*, *supra* note 111.

154. See David A. Super, *Laboratories of Destitution: Democratic Experimentalism and the Failure of Antipoverty Law*, 157 U. PA. L. REV. 541 (2008) [hereinafter Super, *Laboratories of Destitution*] (contrasting failed high-profile partisan efforts to liberalize welfare rules with low-profile bipartisan success in expanding in-kind benefit programs and those for the elderly and people with disabilities); Super, *Protecting Civil Rights in the Shadows*, *supra* note 111.

155. See *infra* Section II.A.

to the acute poor's greater social and cultural resemblance to the middle-class. As noted above, the acute poor are whiter, better educated, and better connected to the workforce than the chronic poor.<sup>156</sup> And in our segregated society, more middle-class people likely know someone who has experienced acute poverty than someone who is or was chronically poor.

Some of the affinity for the acute poor also may well be fiscal: although providing four years of aid to one person costs no more than providing one year of aid to four people, the former may feel like a more open-ended, uncontrollable commitment. Acute poverty may seem like a fleeting aberration, a quickly remediable mistake (never mind that that "mistake" keeps recurring); chronic poverty is far more commonly viewed as something deliberately deviant. The misperception that acute poverty is far less costly to address than chronic poverty is a two-edged sword, as it encourages arguments that the private sector, or local governments with very modest tax bases, can provide what is needed.

In addition, human nature tends to be far more communitarian during acute crises such as natural disasters. Aid to the chronic poor can appeal to redistributionists, of which this country has relatively few; aid to the acute poor is much more about humanitarianism. As noted above, the obvious economic waste commonly resulting from acute poverty is obviously offensive to seemingly apolitical preferences for economic efficiency.<sup>157</sup> Sometimes, public concern for the acute poor redounds to the benefit of the chronic poor. Michelle Landis Dauber shows that many concepts in the New Deal were consciously derived from this nation's history of relieving acute poverty brought on by natural disasters.<sup>158</sup> The New Deal, in turn, used the economic disaster of the Great Depression, and attendant sympathy for the acute poor, to win enactment of programs that aided large categories of the chronic poor.

Valorization of the acute poor has been a persistent theme in welfare policy debates since the late 1980s. Candidates for high office brag about having overcome early bouts of acute poverty as a demonstration of their strong character.<sup>159</sup> Polemically, this takes the form of slogans demanding that benefit programs provide "a trampoline, not a hammock."<sup>160</sup> Analytically, this took the form of

156. See *supra* Section II.B.2.

157. See *supra* Section II.C.1.a.

158. Michele L. Landis, *Fate, Responsibility, and "Natural" Disaster Relief: Narrating the American Welfare State*, 33 *LAW & SOC'Y REV.* 257 (1999); see also Michele L. Landis, "Let Me Next Time Be 'Tried By Fire'": *Disaster Relief and the Origins of the American Welfare State 1789-1874*, 92 *NW. U. L. REV.* 967 (1998).

159. See, e.g., CARLY FIORINA, *RIISING TO THE CHALLENGE: MY LEADERSHIP JOURNEY* (2015); Ashley Parker, *Republican Candidates, Minus Donald Trump and Ted Cruz, Play Nice at Poverty Forum*, *N.Y. TIMES* (Jan. 9, 2016), <https://www.nytimes.com/2016/01/10/us/politics/republican-candidates-minus-donald-trump-and-ted-cruz-play-nice-at-poverty-forum.html> [https://perma.cc/F6JS-PSKV].

<sup>160</sup>AP Wire Serv., *Gov. Walker Signs 9 Bills Limiting Welfare: 'More like a Trampoline; Less like a Hammock,' FOX6NOW.COM* (Apr. 10, 2018, 4:18 PM), <https://fox6now.com/2018/04/10/gov-scott-walker-to-sign-9-welfare-overhaul-bills-into-law/> [https://perma.cc/CZ85-CF9R].

debates about the length of spells of assistance. The 1996 welfare law was presaged by a debate over the size of the acute poor, with both sides assuming that they were more virtuous. Opponents of Aid to Families with Dependent Children (AFDC) focused on the long average duration of aid receipt by those on the program at any given time, suggesting that the program was dominated by the chronic poor. AFDC's supporters, in turn, focused on the short average duration of aid of those entering (or leaving) the program, focusing on AFDC's importance to the acute poor.<sup>161</sup> A similar, if less prominent, debate proceeded with respect to food stamps, with both sides assuming that serving a greater fraction of acutely poor people made the program more desirable.

Programmatically, enthusiasm for the acute poor led to the establishment of, and long-time bipartisan support for, the UC system.<sup>162</sup> More generally, when the Great Depression introduced acute poverty to a huge number of middle-income people who had previously regarded themselves as very different from the chronic poor, we saw a dramatic expansion of federal and state intervention against poverty generally. National health care reform, which had long been on some progressives' political agenda but never came close to enactment, was helped over the threshold by the surge in acute poverty generated by the Great Recession. Although the eventual entrenchment of the Affordable Care Act is likely to lead to broader shifts in social insurance policy,<sup>163</sup> to date the dominant model of aid to the acute poor has been built around individual, highly discretionary charity rather than systematic programming.

## 2. *Practical Politics*

Despite politicians' public embrace of the acute poor, the reality is increasingly different. When forces supportive of, and hostile to, the chronic poor do battle, the acute poor are all too often collateral casualties. The charitable model allows all sides in battles over the chronic poor to view the acute poor as not raising significant public policy issues. And because the acute poor are little considered and even less well understood, they often bear the brunt of rhetoric and policies intended to discipline the chronic poor.

### *a. Inability to Leverage Power Politics*

Without effective access to conventional power politics, expansions of anti-poverty programs typically require a long time to build up support for a change,

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161. MARY JO BANE & DAVID T. ELLWOOD, *WELFARE REALITIES: FROM RHETORIC TO REFORM* 28–40 (1994).

162. Even Charles Murray, who achieved widespread attention for demanding the wholesale elimination of anti-poverty programs, found UC acceptable. CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980*, at 230 (1984).

163. David A. Super, *The Modernization of American Public Law: Health Care Reform and Popular Constitutionalism*, 66 *STAN. L. REV.* 873 (2014) [hereinafter Super, *Modernization of American Public Law*].



building public awareness, recruiting political leaders whose primary attention is directed elsewhere, crafting and refining legislation, and wearing down the political system's inertia. This kind of time is not available for that segment of the acutely poor that suffers a simultaneous crisis, such as a natural disaster or an economic downturn. To be sure, a high-profile mass calamity may accelerate the public's awareness of the problem, but the mobilization of the political process—in particular, recruiting leaders and getting them up to speed—is still a lengthy process. The fact that the highly publicized mass suffering Hurricane Katrina did not produce a single permanent change to any major assistance program,<sup>164</sup> and that extensions of UC benefits legislated during recessions are invariably subject to arbitrary time limits<sup>165</sup> (rather than made contingent on economic conditions)<sup>166</sup> is further testament to the political process's grudging response to the acute poor and the defensiveness of even their supporters. Little evidence so far has emerged that the coronavirus recession will be any different: despite a massive public health problem, not a single state so far seems to be seriously considering expanding Medicaid to childless adults and parents with incomes between the state's historical public assistance grant levels and 138% of the poverty line.

The acute poor are even less likely than the chronic poor to have power within the political system.<sup>167</sup> They tend to be geographically diffuse. And their self-identity as low-income people is likely to be even thinner than that of the chronic poor, particularly after the episode of poverty passes. Although some former members of the acute poor may return to the ranks of middle-income people with greater sympathy for anti-poverty programs,<sup>168</sup> many find the experience so traumatic that they wish to distance themselves from it as much as possible. This is particularly true because, as discussed below, our current programs often fail to provide timely, meaningful assistance to the acutely poor. Although some social scientists suggest replacing the “poor/non-poor” dichotomy in our thinking with a range from “persistent poverty” through “transitory poverty” and “economic vulnerability” to “financial security,”<sup>169</sup> asking people to admit even to being vulnerable requires a severe hit to their self-esteem—all the more so in a society whose response to chronic poverty includes shaming of economic adversity. Thus, the exigencies of their condition prevent them from being politically active during their periods of

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164. See David A. Super, *Against Flexibility*, 96 CORNELL L. REV. 1375 (2011) (describing failure to enact timely legislation in response to the mass devastation of Hurricane Katrina).

165. See, e.g., 42 U.S.C. §§ 1400–1400v (2018) (providing UC benefits with a fixed national termination date).

166. See CHAD STONE & HANNAH SHAW, CTR. ON BUDGET & POL'Y PRIORITIES, EMERGENCY UNEMPLOYMENT INSURANCE BENEFITS REMAIN CRITICAL FOR THE ECONOMY 1 (2010), <https://www.cbpp.org/sites/default/files/atoms/files/11-10-10ui.pdf> [<https://perma.cc/HQE5-TK44>] (noting the impending cessation of extended UC despite unemployment well above 9%).

167. See Super, *Protecting Civil Rights in the Shadows*, *supra* note 111 (explaining why power politics has proven inferior to humanitarian appeals in U.S. anti-poverty politics).

168. See Duncan et al., *supra* note 113, at 88 (suggesting that possibility).

169. *Id.*

acute distress and denial of their vulnerability makes efforts to secure a more robust safety net unlikely when their situation improves.

The recent rise in protectionist populism in both major political parties suggests another possible route to gaining attention for the acute poor within the realm of power politics. Even if broader trade improves efficiency and hence total economic well-being, it inevitably yields major losers in industries vulnerable to competition from imports. Cushioning the blow for those rendered acutely poor by layoffs and plant closings would be wise for free trade advocates. To date, however, their interest in anti-poverty programs has been limited to SNAP, and even then, only as a way of diverting money from trade-distorting farm subsidy programs.<sup>170</sup>

This does not preclude appeals to empathy and public ethics, but that, too, faces practical obstacles. Critics of low-income people and programs that serve them have achieved enormous success in painting the chronic poor as the only image of low-income people generally. Anti-poverty groups for the most part have accepted this characterization and seen fit to do battle on the ground chosen by their foes.

*b. The Limited Efficacy of Litigation for the Acute Poor*

Nor have the acute poor fared well in less conventional forms of political struggle. Litigation, which played a symbiotic role with anti-poverty political advocacy prior to 1995,<sup>171</sup> obtained little traction on behalf of the acute poor. Such cases were procedurally difficult to sustain, with many potential plaintiffs becoming moot before complaints could be filed and others struggling to ward off dismissals for mootness.<sup>172</sup> These factors made systemic unemployment compensation cases relatively unusual.<sup>173</sup> Even in a period when it was interpreting welfare law generously for chronically poor recipients of Aid to Families with Dependent Children (AFDC),<sup>174</sup> the Supreme Court responded harshly in *Quern v. Mandley* to acutely poor claimants' attempt to regularize AFDC's Emergency Assistance (EA) component.<sup>175</sup> Hewing closely to the charity-inspired discretionary model rather than the legalistic approach it had taken to the chronic poor, the Court announced a sweeping principle of deference to states' judgments. Although the Court later

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170. David A. Super, *The Quiet "Welfare" Revolution: Resurrecting the Food Stamp Program in the Wake of the 1996 Welfare Law*, 79 N.Y.U. L. REV. 1271, 1370–77 (2004) [hereinafter Super, *Quiet "Welfare" Revolution*] (describing the successful efforts of pro-trade Republicans, including President Bush, to shift money from agricultural programs to SNAP in the 2002 Farm Bill).

171. David A. Super, *Are Rights Efficient? Challenging the Managerial Critique of Individual Rights*, 93 CALIF. L. REV. 1051 (2005).

172. *But see* Hess v. Hughes, 500 F. Supp. 1054, 1057–58 (D. Md. 1980) (rejecting such an argument).

173. *See* Esparza v. Valdez, 862 F.2d 788 (10th Cir. 1988) (dismissing UC suit for mootness).

174. *See, e.g.*, Philbrook v. Glodget, 421 U.S. 707 (1975) (striking down state restrictions on AFDC eligibility in a unanimous opinion by Justice Rehnquist).

175. *Quern v. Mandley*, 436 U.S. 725 (1978).

backtracked somewhat in *Blum v. Bacon*,<sup>176</sup> its failure to provide a clear basis for distinguishing between the two cases, and its obvious discomfort at legalizing the response to acute poverty, left legal services lawyers skeptical that additional such litigation was worth allocating limited resources to bring.

*c. Privatizing the Response to Acute Poverty*

The greater sympathy much of the public holds for the acute poor facilitates recruiting and energizing volunteers. With many in public life seeking to shift responsibility to private charities for as many human services needs as possible, charities often find themselves the primary source of aid to some low-income people. An example of the strength of this feeling may be seen in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which cut food stamps more than \$27 billion over six years—almost entirely through across-the-board benefit reductions. It also, however, added \$600 million over the same period to buy commodities for emergency food providers to distribute to hungry families in crisis, including those suffering from the food stamp cuts. The private-sector delivery mechanism, and the targeting on the acute poor, have made The Emergency Food Assistance Program (TEFAP) immensely popular. Diffuse private charitable delivery mechanisms, however, also have the effect of concealing the extent of the problem. It is easy to assume that the kindhearted people running food pantries would never turn away a family in genuine need, ignoring the reality that they must do just that if need far outstrips the resources provided to them.<sup>177</sup>

The for-profit sector also plays a larger part in responding to acute poverty than to chronic poverty. This has caused considerable alarm that these entities were siphoning off much of the little disposable income individuals and families have. In particular, the Consumer Financial Protection Bureau initially recognized this and is, in effect, sought to limit payday and other sub-prime lenders to doing business with the acute poor, not the chronic poor. President Trump's appointees since have reversed this policy.<sup>178</sup> Even if it wanted to, the Bureau's ability to achieve this result is far from clear, but even if it can, it is a relatively modest one: some developing countries combat acute poverty with state-sponsored low-interest lenders.<sup>179</sup>

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176. *Blum v. Bacon*, 457 U.S. 132 (1982).

177. See Janet Poppendieck, SWEET CHARITY? EMERGENCY FOOD AND THE END OF ENTITLEMENT (1998) (showing a vast mismatch between emergency food resources and need).

178. Nicholas Confessore & Stacy Cowley, *Trump Appointees Manipulated Agency's Payday Lending Research, Ex-Staffer Claims*, N.Y. TIMES, Apr. 28, 2020, <https://www.nytimes.com/2020/04/29/business/cfpb-payday-loans-rules.html> [<https://perma.cc/W7GP-ZGGE>].

179. See, e.g., Description of "Tia Rica" Program, GOBIERNO DE CHILE, <https://www.dicrep.cl/la-institucion/historia/> [<https://perma.cc/R7BH-EV79>].

*d. Collateral Damage in Battles over the Chronic Poor*

Our obsession with the chronic poor clouds our thinking about the acute poor. To begin with, the popular trampoline metaphor is hardly apt: the acute poor often provide their own energy for escaping poverty and seek much the same sort of support as the chronic poor, just for a shorter time. But the notion that low-income people need to be forcibly launched toward greater self-sufficiency fits nicely with condescending narratives about low-income people generally and makes no distinction between those who raise their incomes of their own volition and those that the state must press to do so.

Budget cutting fervor typically crescendos right after the trough of an economic cycle.<sup>180</sup> At this point, the headline deficit numbers look frightening to the unsophisticated voter and claims that tax cuts will accelerate an anemic recovery find a receptive audience. To support these demands for austerity come attacks on recipients of public benefits as doing too little to help themselves. A large fraction of those recipients, however, are those suffering acute poverty because of the recession.

Defenders of the chronic poor, too, often badly undermine the acute poor. To show their fiscal probity, they have largely eschewed seeking permanent legislation that would provide additional aid whenever specified indicators (such as the unemployment rate) exceeded certain thresholds, leaving the acute poor to hope Congress timely enacts new legislation for each crisis. They similarly seek to demonstrate probity by embracing draconian reporting, verification, and anti-fraud measures, which affect the naïve far more than the dishonest. If anything, these policies commonly target the acute poor with particular vigor because they look more like the non-poor (and hence ineligible) than the chronic poor do.

More generally, in their efforts to assure skeptical voters and policymakers that the chronic poor receiving benefits from public programs are in fact the “truly needy,” the chronic poor’s supporters agreed to extremely rigorous eligibility requirements that denied participation to claimants whose situations offered any ambiguity at all. They thus sharpened the line between middle-income voters and destitute people in extreme need, denying aid to claimants with one foot in each of those two worlds. Because that is precisely the position of many of the acute poor, these rules denied aid to many of them.

Although some changes in program rules have helped the acute poor, most of those were enacted primarily to benefit the stable near-poor instead. These changes include liberalization or elimination of resource limits, lifted income eligibility limits, and procedural simplifications such as self-attestation of income in Medicaid. Often, however, these reforms for the stable near-poor required substantial current earnings, excluding many of the acute poor.

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180. David A. Super, *Rethinking Fiscal Federalism*, 118 HARV. L. REV. 2544 (2005).

*e. Active Hostility Toward the Acute Poor*

In recent years, critics of anti-poverty policies have made their attacks on the acute poor much more explicit.<sup>181</sup> The Tea Party is widely regarded as having sprung up in response to a rant against aid to the acute poor in the mortgage crisis.<sup>182</sup> Despite the Great Recession's obvious severity, critics insisting that it reflected a collective failure of the work ethic—effectively tarring the acute poor with the same “behavioral poverty” brush long wielded against aid to the chronic poor—received surprising prominence. As our politics become less and less able to grapple with institutional problems and more addicted to blame and scapegoating, this trend is likely to continue.

These attacks have had real-world effects, hurting the chronic poor but often hurting the acute poor even more. North Carolina sharply reduced the number of weeks of UC available to laid-off workers even at the cost of reducing its receipt of federal funds. Arizona recently reduced its lifetime limit on aid under the Temporary Assistance for Needy Families (TANF) to twelve months. This is not even superficially adequate for the acute poor: during and after the Great Recession, Arizona's unemployment rate exceeded 8% for almost four consecutive years—and exceeded 10% for nineteen consecutive months.<sup>183</sup> At the behest of the American Legislative Exchange Council (ALEC) and the Secretary's Innovation Group (SIG), Florida, Minnesota, Missouri, North Carolina, and Oklahoma enacted legislation prohibiting their human services departments from seeking routine waivers of SNAP's three-month time limit on childless adults for areas with abnormally high unemployment and other states eligible for the continuation of such waivers declined to renew them.

## II. TYPES OF POLICIES THAT INCREASE HARDSHIP FOR THE ACUTE POOR

Although public welfare law has been intensely controversial over the years, virtually all influential positions across the ideological spectrum in this country have shared several key assumptions. This consensus standard model of anti-poverty law is built around concerns about moral hazard: that providing aid to low-income

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181. See David A. Super, *The New Moralizers: Transforming the Conservative Legal Agenda*, 104 COLUM. L. REV. 2032 (2004) (describing the importance of moral critiques of low-income people in contemporary policymaking).

182. Danny Vinik, *CNBC's Rick Santelli Was Embarrassed on Live TV for Being Wrong About the Economy. But He's Hardly Alone*, NEW REPUBLIC (July 14, 2014), <https://newrepublic.com/article/118693/steve-liesman-cuts-short-rick-santellis-cnbc-rant-about-inflation> [https://perma.cc/AK9Y-GGRR].

183. Unemployment in Arizona reached 8.2% in December 2008 and did not drop back below 8% until October 2012 (and even then, remained within a few tenths of a percentage point of 8% for several additional months). Arizona's unemployment rate was at least 10% from May 2009 through November 2010. Arizona's Unemployment Statistics from January 2008 to December 2012, U.S. BUREAU L. STAT., <https://www.bls.gov/> (last visited Apr. 21, 2020) (click “DATA TOOLS” from drop down menu; then, “Data Retrieval Tools;” then “Unemployment;” then click on “Data Finder” icon next to “Local Area Unemployment Statistics (LAUS);” click Arizona Unemployment Rate hyperlink; select 2008 for the “Start Year” and 2012 for “End Year;” lastly, click “Update”).

people invites abuse in the form of claims from people who either are not in need or are in need because of their own moral failings. Liberals and conservatives often disagree about what constitutes need and what counts as a moral failing, and they may contest the resources that society should devote to aiding the poor, but they broadly agree that fighting moral hazard by restricting access to aid is one of the most important goals of program design.<sup>184</sup> In essence, this model requires claimants to fall into, and demonstrate, destitution before receiving most forms of assistance with monthly subsistence costs.<sup>185</sup>

Public benefit programs restrict access in a variety of ways. Some affect potential claimants' propensity to apply; others are rules restricting which applicants may receive benefits. These rules may be divided between procedural and substantive requirements, both of which commonly exclude large numbers of people from major programs. Substantive rules, in turn, include both financial and non-financial eligibility requirements. Financial rules include income eligibility limits,<sup>186</sup> which are administered with filing unit rules<sup>187</sup> (i.e., rules about which other people's income counts when a claimant seeks benefits) and budgeting (i.e., rules specifying the period for which income is relevant to eligibility).<sup>188</sup> Some programs also base eligibility on the resources (assets) available to the claimant.<sup>189</sup> Non-financial rules often include categorical rules (e.g., limiting benefits to the elderly, or to persons with disabilities, or to families with children),<sup>190</sup> conduct requirements,<sup>191</sup> and sometimes waiting lists or other priority rules for distributing benefits if the program lacks the funding to serve all eligible people who apply and comply with all program procedures.<sup>192</sup>

A great many policies restricting access to means-tested benefits affect the acute and chronic poor similarly. Categorical rules excluding childless adults or income eligibility limits, for example, simply narrow the kinds of needs the programs will recognize. They probably have roughly the same effect on acute and chronic poor claimants.

Several restrictive policies, however, reduce the availability of aid to the acute poor substantially more than they do to the chronic poor. These underappreciated

184. This is far less true in much of Europe, where corporatist and social democratic models predominate. *See supra* note 95.

185. The model does not require destitution to receive certain services, such as health care, or for annual assistance through the tax code.

186. *See, e.g.*, 7 U.S.C. § 2014(c) (2018) (setting income eligibility limits for SNAP).

187. *See, e.g., id.* § 2012(m) (defining who must be included in the "household" unit for which claimants make SNAP applications).

188. *See, e.g., id.* § 2014(f) (establishing two possible budgeting methods for SNAP).

189. *See, e.g., id.* § 2014(g) (setting resource eligibility rules for SNAP).

190. *See, e.g., id.* § 2015(o) (limiting many childless adults to three months of SNAP benefits every three years); 42 U.S.C. § 602(a) (2018) (limiting TANF block grant funds to families with children); 42 U.S.C. § 1396a(a)(10)(A) (limiting Medicaid categories existing prior to the Affordable Care Act).

191. *See, e.g.*, 7 U.S.C. § 2015(d), (h) (imposing work and child support cooperation requirements in SNAP).

192. 42 U.S.C. § 1786(g)(4) (requiring WIC program to have such a priority system).

effects severely exacerbate the effects of acute poverty on individual low-income people and on society as a whole. This Part identifies several types of those policies.

*A. Deterrence Policies*

Deterrence policies seeking to raise the costs of participating above its expected benefits are a crucial part of how policymakers restrict the chronic poor's participation in public benefit programs.<sup>193</sup> The remainder of this Section discusses the ways in which eligibility policies disqualify the acute poor, intentionally or otherwise. Many of the policies seeking to deter participation, however, may have as great or greater impacts. Some research suggests that the acute poor often are in even worse financial shape when they apply for public benefits than the average chronic poor recipient.

The stigma attached to receiving means-tested benefits is likely to afflict and deter the acute poor far more than the chronic poor for several reasons. First, the acute poor are likely to live in social circles where participation in these programs is much less common; being discovered buying food with SNAP or switching to a physician who accepts Medicaid therefore may seem more surprising and alienating.

Second, acute poor people are likely to have had less experience with these programs and their stigma. Stigma's effects are likely to decline over time. Those that have never received public benefits before may be particularly reluctant to cross that line, perhaps overestimating the shame they would feel from receiving aid or perhaps feeling pride in having *never* received such benefits. Even among those that have received public benefits previously, the longer one does so, the more specific embarrassing events—being seen by a friend entering a welfare office, being criticized by strangers for SNAP purchases, explaining to a doctor why one is changing to a Medicaid provider, sitting in a filthy waiting room, being asked personal questions in a cubicle with little privacy, etc.—they already will have experienced. Although these experiences take their toll on claimants' morale, they also reduce the potential harm from further applications and participation.

And third, the acute poor may face particular moral criticism for receiving benefits based on assumptions that they could have avoided needing the aid.

The relative deterrence effects of paperwork requirements are more ambiguous. On the one hand, many of these policies' attrition among eligible claimants results from limited literacy or numeracy. Because the acute poor as a group are better educated than the chronic poor, they presumably will be less frequently confused by obscurely written forms and notices. On the other hand, public benefit programs' administrative apparatuses are notoriously inconsistent at even trying to explain themselves. The chronic poor may have much greater access to other sources of information about how the bureaucracy behaves and what it expects of them: their own prior experiences or those of their friends and relatives.

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193. David A. Super, *Offering an Invisible Hand: The Rise of the Personal Choice Model for Rationing Public Benefits*, 113 YALE L.J. 815 (2004) [hereinafter Super, *Offering an Invisible Hand*].

The absence of this bureaucratic experience may result in delays or denials of aid even for the most diligent and literate acute poor claimants. Some of the chronic poor are so exhausted and disorganized that they fail to meet important administrative deadlines; some of the acute poor may be so in shock from their sudden reversal, or so demoralized from the position in which they find themselves, that they, too, fail to meet such deadlines.

*B. Procedural Rules Failing to Accommodate the Acute Poor*

Unfortunately, many of the assumptions underlying anti-poverty programs are built upon images of the chronic poor. These assumptions often prove deeply flawed even when applied to the chronic poor but are even more so with respect to the acute poor.

For example, the public welfare system commonly assumes that claimants are entirely idle, with unlimited time available for agencies to allocate as they see fit. The result is burdensome eligibility determination processes, featuring long waits and massive busywork, as well as grossly inefficient “welfare-to-work” and child support enforcement programs. These time-wasters frequently clash with the part-time jobs, parent-teacher conferences, caregiving responsibilities, medical appointments, and other agency involvements of chronically poor claimants. Acutely poor people are even more likely to have conflicting demands on their time, either seeking to resolve whatever barrier to employment cast them into poverty or looking for work directly. We should not be compelling acute poor people with extensive, often skilled, employment histories to choose between applying for jobs for which they are specially qualified and sitting in a “job club” making endless rote phone calls to employers of unskilled labor hoping that a vacancy has occurred in the three minutes since the last “job club” participant called.<sup>194</sup>

In addition to assuming that claimants have unlimited time on any particular day, public benefit programs also tend to assume that claimants are in no particular hurry to find employment. Thus, long waiting lists for childcare assistance arouse little public attention or outrage. For the acute poor, who are mindful that every month they are out of work makes them look less desirable to prospective employers, these waiting lists are devastating.

Public benefit programs also are remarkably unselfconscious about the complexity of the procedures claimants must navigate to secure benefits. Tests of the reading levels of application forms and program information materials routinely find them requiring college-level reading skills or above. Even new legal services attorneys are commonly baffled when attempting to help their clients complete these forms. Chronic poor claimants master the forms through a combination of trial and error and knowing people experienced in navigating the programmatic maze. Acute poor claimants, by contrast, are likely to err. At best, this will result in a denial that the claimants may mistake for a decision on the merits. At worst, honest

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194. Duncan et al., *supra* note 113, at 88.



errors may trigger fraud investigations by offices with quotas to meet, terrifying the claimant and anyone who knows her or him.

*C. Defective Measures of Financial Need*

Means tests in public benefit programs pursue a variety of often-inconsistent aims. Some focus solely on the income readily available to a claimant to meet one or a set of expenses. Others, however, seek to limit benefits to a subset of low-income people in a particular type of circumstances, often extreme destitution. Indeed, some eligibility restrictions originated at least in part in efforts to keep the acute poor out of programs. This seems to have reflected a profile of people in need that the acute poor did not meet because of their lingering similarities to the middle class. Rules requiring extreme destitution commonly hit the acute poor hard, allowing the chronic poor alone to qualify when their destitution becomes sufficiently extreme.

For example, restrictions on the resources that recipients could own insist that claimants reach extreme destitution before sending public aid.<sup>195</sup> In the case of liquid resources, this could be justified as demanding that the acute poor rely on their savings as their primary safety net, rather than public aid. Critics might challenge that demand by arguing that means-tested programs should be regarded as social insurance, with general tax payments being the premiums. This social insurance model, and the greater participation of the acute poor that it would yield, would enhance social cohesion as well as the political health of these programs relative to the dominant destitution model. But at least the demand that personal savings be acutely poor people's first resort is a coherent allocation of public funds.

Far more problematic are disqualifications for holding non-liquid resources. Nobody can eat their car, and a forced sale of one creates enormous financial waste. It also is likely to adversely affect the claimants' ability to find and keep employment and cope with the chores of daily life such as buying food and getting children to school. The standard vision of the poor, which very much specifies the chronic poor, expects total destitution and does not consider employment-related needs. (It also is distinctly urban, not contemplating that the lack of a car could isolate a claimant from society and put the basic necessities out of reach.) Rules counting claimants' homes as resources,<sup>196</sup> or subjecting them to liens for the value of assistance paid,<sup>197</sup> similarly insist on total degradation as a condition of receiving aid. They thus fit well into Piven and Cloward's narrative of harsh public assistance programs seeking to sharpen lines between low-wage workers and the destitute as a means of disciplining those workers.

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195. *See, e.g.*, 7 U.S.C. § 2014(g)(1) (limiting resources SNAP participants may own).

196. 45 C.F.R. § 233.20(a)(3)(i)(B)(5) (1996) (counting certain houses unless the family demonstrates an inability to sell).

197. *See* *Charleston v. Wohlgemuth*, 332 F. Supp. 1175 (E.D. Pa. 1971) (upholding such liens).

Rules disqualifying claimant based on retirement savings may represent policymakers' obliviousness rather than design. Their image of the chronic poor has no place for retirement savings. To be sure, those rules originated in an era before Individual Retirement Accounts (IRAs), 401(k)s, 403(b)s, and the like were widespread. But the large numbers of low-wage workers not covered, or vested, in pension plans have long had to make their own provisions to supplement Social Security. Whether through savings accounts, rental properties, or other means, these assets are essential to avoiding poverty in their old ages. The destitution-based model of the chronic poor, however, assumes that they will always be poor—and hence requires claimants to divest. This model makes no allowance for the acute poor.

Filing unit rules can play similar roles. The destitution model assumes that the chronic poor are surrounded by other chronic poor people in their homes and families. It enforces this assumption by counting the income and resources of those people in determining a claimant's eligibility.<sup>198</sup> This can disqualify acutely poor claimants who remain embedded in more prosperous families. From a cost-reduction perspective, this may appear plausible: the friends and relatives taking in an acutely poor individual may have the theoretical ability to meet all of her or his needs. In practice, they may have reached the limit of their willingness to provide assistance when they made a spare room available to the individual. Requiring that the host's circumstances be counted may effectively force the claimant to choose between the only available source of housing and public benefits eligibility. Although these filing unit rules can have similar effects on the chronic poor, more of those offering housing to the chronic poor are likely to be poor enough themselves not to eliminate financial eligibility.

#### *D. Flawed Efforts to Separate the Acute and Chronic Poor*

Although many of the acute poor's difficulties result from their inability to meet requirements designed for the chronic poor, in some situations, policymakers have deliberately sought to treat the acute and chronic poor differently. Some important programs formally or informally bar the acute poor or treat them significantly less well than the chronic poor. In other situations, attempts to provide specifically for the acute poor have fallen victim to the toxic politics of chronic poverty.

##### *1. Programs that Expressly or Implicitly Require Chronic Poverty*

Because the acute poor are, by definition, in need for only relatively short periods of time, a host of timing rules can effectively disqualify many of them from

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198. SNAP counts the income and resources of any person living with, and purchasing and preparing food with, a claimant. 7 U.S.C. § 2012(m)(1)(B). Other programs may limit the counting of income to relatives living with the claimant. *See, e.g.*, 42 U.S.C. § 1396a(a)(35) (2018) (requiring legally responsible relatives' circumstances to be counted in determining eligibility for Medicaid).

aid. This is particularly true of requirements that need have a specified minimum duration, waiting periods, and benefits paid after great delays.

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability benefits are limited to those whose disabilities have lasted or are expected to last for twelve months and those whose conditions are expected to result in death. No matter how severely ill or injured—and no matter how completely unable to work—a worker may be, if she or he is likely to recover within a year she or he is ineligible for SSDI and SSI. Those injured on the job may be covered by workers' compensation, although delays in processing claims and disputes about injuries' causation often prevent the claimant from receiving timely aid. Those hurt in non-covered employment and those that become ill or injured in other ways—communicable disease, automotive accident, etc.—are unlikely to receive any help unless they are among the minority of employees covered by workplace disability policies. Few state or local governments have disability-based cash assistance programs for those not qualifying for SSI.

Even those meeting SSDI's durational requirement generally cannot receive Medicare coverage for twenty-four months. In addition to burdening chronic poor claimants for two years, this rule absolutely denies coverage to those acutely disabled for periods between one and two years.

Other programs' explicit "waiting periods" similarly have disproportionate impacts on the acute poor.<sup>199</sup> For example, UC typically imposes at least a one-week explicit waiting period on new applicants. It also can require much longer waits for claimants who need their earnings in the current or just-completed calendar quarter to obtain insured status under UC.

Housing presents a stark example of this. The acute poor's problems with housing—manifested in homelessness—is relatively well-known and arouses broad public sympathy. Yet our major housing assistance programs exclusively serve the chronic poor. All have waiting lists that put housing out of reach for even acute poor families suffering relatively long bouts of poverty. Although the programs now do allow more near-poor families to qualify—indirectly covering some acute poor families by serving them even when they are not poor—this actually exacerbates the waiting lists because the expansion in eligibility was not accompanied by an expansion in the supply of subsidies. Thus, housing programs' relative generosity to the chronic poor—by not matching eligibility limits to available supply—effectively closes these programs to the acute poor. What is left is a thin patchwork of emergency shelters run by some local governments and private charities that offer some of the worst housing conditions—lacking privacy and security for residents' persons and property—in our society today.

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199. Thus, for example, a worker who is disabled for ten years will lose 20% of her or his potential Medicare coverage to the waiting period while five workers who are disabled for two years each—claimants who collectively will receive approximately the same amount in SSDI—will receive no Medicare coverage at all.

Programs relying on long accounting periods to determine need have the equivalent of a rolling waiting period.<sup>200</sup> This is particularly true of programs administered through the tax system. These programs neglect the acute poor both because their long accounting periods can minimize or miss completely periods of acute poverty and often because of their delayed provision of aid.

For example, the Earned Income Tax Credit (EITC) bases eligibility on annual income. A family that experiences a bout of severe poverty that crosses from one year to the next may not have a low enough income in either year to qualify for a substantial EITC. Even if an acutely poor family does qualify, it will not receive assistance until months, often many months, later. By contrast, a family in chronic poverty will receive similar EITCs each year based on its circumstances during the prior year: EITC's temporal mismatch will not cause them much harm, apart from the lack of aid during the family's first year of low-wage employment. In theory, prior to 2010, the Internal Revenue Code allowed up to about 60% of a family's anticipated EITC to be paid as part of its paycheck throughout the year,<sup>201</sup> but this "advance payment" option never served more than about 1% of recipients. The low take-up rate of advance payment of the EITC results from both employers' resistance and workers' fear of incurring large tax liability if the advance payment proves excessive. This latter concern essentially reflects a recognition that EITC is not designed to serve the acutely poor and will punish those using it to help them through part-year episodes of need.

The premium tax credits for purchasing insurance under the Affordable Care Act are only modestly better suited to the needs of the acute poor. It, too, relies on an annual accounting period that can miss or understate periods of acute poverty. It generally relies on circumstances in the prior year (as reflected in that year's tax return, if any was filed) to determine current need, with limited provision for providing assistance to those having suffered economic reverses. It does provide aid on a current basis with a far more effective advance payment mechanism than the EITC. But because it claws back premium tax credits that exceed those subsequently determined with an annual accounting period, it effectively offers the acute poor only an opportunity to borrow assistance, with a requirement to repay by the following April 15.<sup>202</sup> Most acutely poor people are uncertain when their

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200. This is by no means inevitable. For example, although SNAP uses retrospective accounting for certain ongoing recipients, it determines eligibility and benefits prospectively for new applicants and, even when accounting retroactively, can disregard terminated sources of income. 7 C.F.R. § 273.21(g)(1)–(3) (2019). SNAP's retrospective accounting does not reach back more than two months, yielding far more current assessments of need than those in the tax-based benefit programs; the need for adjusting benefits to meet current needs is far greater when a program relies on information a year or more in the past to determine need.

201. 26 U.S.C. § 3507, *repealed by* Pub. L. No. 111-226, § 218, 124 Stat. 2403 (2010).

202. If the family has received sufficient income in the first part of the year to render it ineligible for large premium tax credits when determined on an annual basis, it will not be able to receive more during a period of acute poverty in the latter part of the year.

fortunes will improve and are leery of putting themselves in a position to owe a large sum to the IRS if their hardship lingers.

Even where a program does not impose an explicit durational eligibility requirement, its design can effectively deny aid to the acute poor in their time of need. For example, most states deny UC to workers who lose their jobs due to medical crises of their own or loved ones.<sup>203</sup> SNAP denies benefits to many otherwise-eligible people who are acutely poor because of their enrollment in higher education;<sup>204</sup> most states' TANF-funded cash assistance programs effectively do the same thing.<sup>205</sup>

At times, policymakers become so enamored of the idea of lifting up the dysfunctional chronic poor that they deny eligibility to the acute poor struggling to get by in the circumstances to which the acute poor are to be raised. For example, AFDC applied more favorable deductions to earnings from jobs obtained by recipients while on aid than to jobs that applicants already held.<sup>206</sup> The TANF legislation similarly provides for exempting from resource consideration moneys that recipients deposit into Individual Development Accounts (IDAs) but makes no similar provision for assets already held by new applicants.<sup>207</sup>

### *2. Displaced Hostility for the Chronic Poor Affecting the Acute Poor*

Programs nominally designed to aid the acute poor have all too often been damaged and distorted by fierce hostility to the chronic poor. Nowhere is this more apparent than in the most prominent program for the acute poor: UC. UC hugs the line between universal and anti-poverty programs: although it has no formal means test, it is available only to those without employment, steering most of its benefits to the poor and near-poor. It seeks to exclude the chronic poor by conditioning eligibility on substantial recent employment, by denying benefits to those with current barriers to re-employment, and by strictly time-limiting benefits.

Yet fears that it might serve substantial numbers of the chronic poor have led to numerous harsh measures that exclude acutely poor workers. Its requirement that claimants' prior employment be of a high intensity and duration make it unavailable to workers that had been maintaining themselves through intermittent or seasonal employment and to parents who combined work with caregiving. Its effective exclusion of people working as independent contractors excludes the acute poor

203. CHAD STONE & HANNAH SHAW, CTR. ON BUDGET & POL'Y PRIORITIES, ADDRESSING LONGSTANDING GAPS IN UNEMPLOYMENT INSURANCE COVERAGE 1 (rev. 2007), <https://www.cbpp.org/sites/default/files/atoms/files/7-20-07ui.pdf> [<https://perma.cc/6R8P-EJ3K>].

204. 7 U.S.C. § 2015(e) (2018).

205. While not explicitly denying aid on the basis of student status as SNAP does, TANF-funded programs commonly impose other time-consuming requirements that effectively compel claimants to drop out. Other examples exist. SNAP denies aid to those acutely poor because of one particular kind of economic calamity: a labor strike. *Id.* § 2015(d)(3); 7 C.F.R. § 273.1(e).

206. 42 U.S.C. § 602(a)(8) (1994) (repealed 1996).

207. *Id.* § 604(d).

that run afoul of a large and growing segment of the contingent labor market. And the judgments it passes on the legitimacy of the cause of a claimant's separation from prior employment reflect the same kind of moralizing common in programs for the chronic poor. The result has been that low and declining shares of the unemployed receive UC, even in severe recessions. Although a few states have moderated some of these rules, particularly in response to complaints about their gendered impact, at least as many states have tightened UC eligibility. Our political system finds it increasingly difficult to resist moralizing against all low-income people, acute and chronic alike.

The most prominent means of distinguishing between the acute and chronic poor is a time limit on eligibility. Time limits, however, have several serious flaws. First, they often reflect wishful thinking about which needs are acute and which are chronic. After the Omnibus Budget Reconciliation Act of 1981, the most significant deduction from earnings for newly employed AFDC recipients ended after just four months, reflecting the preposterous assumption that low-skilled workers were no longer the "truly needy" and could fend for themselves after this time. Transitional Medical Assistance and Transitional Child Care programs typically provide six to twelve months of benefits to newly employed workers, implausibly implying that low-skilled employment somehow would begin to provide health insurance and wages sufficient to afford appropriate childcare within a short time after employment.<sup>208</sup>

Second, because any time limit is inherently arbitrary, and no fixed line separates the acute from the chronic poor, these rules commonly disqualify significant numbers of acutely poor people. This is particularly true in the wake of devastating mass disasters, of "post-modern" recessions that typically lead to slow recoveries, and to those unemployed in a community whose economy has suffered major plant closures or similar calamities. But it is also possible where acute poverty springs from an extended but not infinite incapacity. Moreover, because one limit is unlikely to be demonstrably better than another at separating these groups, political and budgetary pressures to ratchet down the time limits prove difficult to resist.

Finally, and relatedly, because time limits inherently involve arbitrary denials of aid to people in clear actual need, they establish a political precedent that can readily morph into much broader denials of aid to needy people. Massachusetts and Pennsylvania pioneered time limits in their general assistance programs, emphasizing the relative virtue of the "transitionally needy" over those that were

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208. Transitional SNAP benefits arguably operate on a different, more defensible basis: they suspend virtually all reporting and verification requirements for five months when a household works its way off of TANF-funded cash assistance, almost always providing substantially greater benefits than the regular SNAP eligibility rules would. 7 U.S.C. § 2020(s). The assumption that the recipient will become better able to manage SNAP's reporting rules once her or his employment situation has stabilized is probably founded, and a modest five-month benefits bonus seems a plausible work incentive.

“chronically needy” without good excuse.<sup>209</sup> Within a relatively few years, they had eliminated these programs altogether.<sup>210</sup> PRWORA imposed a five-year lifetime limit on assistance under its TANF block grant. Today, the fraction of poor families with children receiving cash assistance is lower than at any time since the 1950s. Yet most of the reduction springs not from the time limits themselves but from other measures that also deny aid to families in need whose legitimacy became impossible to attack after the principle of time limits was accepted. PRWORA imposed a three-month time limit for food stamps that the Administration proposes extending to Medicaid and housing assistance programs.

#### *E. Fiscal Policies*

Our lack of coherent, consistent fiscal strategy for income transfer programs<sup>211</sup> results in irrational policy shifts whose timing is particularly harmful to the acute poor. Vocal concern about spending on anti-poverty programs is dominated overwhelmingly by attacks on the cost of programs for the chronic poor. Particularly during and after recessions, critics claim that those programs’ spending is “out of control” and paint a picture in which a substantially larger share of the population is becoming chronically dependent on government aid. Former Governor Mitt Romney’s famous categorization of 47% of Americans as “takers” is just one example of that phenomenon.<sup>212</sup>

Yet the surging participation that is driving those complaints typically consists overwhelmingly of the acute poor (along with some who begin receiving aid as acutely poor and have difficulty returning to their prior circumstances because of extended economic weakness). And it is these influxes of the acute poor that drive major cutbacks on human services programs serving both the acute poor and the chronic poor. On the federal level, the Omnibus Budget Reconciliation Act of 1981,<sup>213</sup> the Deficit Reduction Act of 1984,<sup>214</sup> PRWORA,<sup>215</sup> the Deficit Reduction Act of 2005,<sup>216</sup> and the 2014 Farm Bill<sup>217</sup> all came in the wake of recessions when critics charged that participation in major public benefit programs was declining too

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209. KATZ, IN THE SHADOW OF THE POORHOUSE, *supra* note 54, at 283–85.

210. MICHAEL B. KATZ, THE PRICE OF CITIZENSHIP: REDEFINING THE AMERICAN WELFARE STATE 303 (2001).

211. See Super, *Rethinking Fiscal Federalism*, *supra* note 180 (finding much of current fiscal federalism pro-cyclical, exacerbating swings in the business cycle).

212. *Making and Taking: Distributional Politics and Growth*, ECONOMIST: DEMOCRACY AM. (Sept. 21, 2012), <https://www.economist.com/democracy-in-america/2012/09/21/making-and-taking> [<https://perma.cc/NKW2-R2W4>].

213. Omnibus Budget Reconciliation Act of 1981: Titles III, VI, IX, XI, XXVI, Pub. L. No. 97-35, 95 Stat. 357.

214. Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494.

215. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

216. Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006).

217. Agricultural Act of 2014, Pub. L. No. 113-79, 128 Stat. 649.

slowly. The Omnibus Budget Reconciliation Act of 1982<sup>218</sup> fit this pattern as well, although by the time it passed, a new recession had begun. The funding caps on programs that are not responsive entitlements, too, have their greatest impacts during recessions and the still-depressed economies that follow them.<sup>219</sup> Programs with waiting lists, as noted above, become effectively closed to the acute poor, with chronic poor recipients unlikely to find the means of leaving and other chronic poor claimants already ensconced on the waiting list.

The effect on the state and local level is even more dramatic. All state and local governments face legal or traditional requirements of balancing their operating budgets on an annual basis.<sup>220</sup> This prevents them from freeing additional resources to assist the acute poor suffering from regional or national economic declines. Indeed, because those declines depress revenues, state and local governments commonly shrink anti-poverty programs precisely at the time large numbers of acute poor people need aid. As these program cuts further reduce demand in the state and local economy, spending and sales tax revenues fall further, fueling additional rounds of cuts.

Efforts to mitigate the disproportionate impact of fiscal constraints on the acute poor have been halting at best. Federal “pay-as-you-go” budgetary rules,<sup>221</sup> which ordinarily require offsetting spending reductions or tax increases in legislation that expand benefit programs or cuts taxes, can be suspended in response to economic emergencies.<sup>222</sup> That authority, however, is rarely invoked; the cost of spending (as opposed to tax cuts) enacted in response to recent recessions commonly has been offset,<sup>223</sup> minimizing any positive macroeconomic effect and limiting the funds that could be made available to the acute poor. Indeed, leveraging the threat of a default on U.S. government debt, Congress induced President Obama to accept sweeping, across-the-board spending reductions in 2011 while the ranks of the unemployed were still swollen from the recession.<sup>224</sup>

Somewhat better at meeting the acute poor’s needs is the structure of budgetary and responsive entitlements,<sup>225</sup> such as UC and SNAP, which do not require new legislation to serve additional people qualifying in harsh economic

218. Omnibus Budget Reconciliation Act of 1982, Pub. L. No. 97-273, 96 Stat. 763.

219. David A. Super, *The Political Economy of Entitlement*, 104 COLUM. L. REV. 633 (2004).

220. Super, *Rethinking Fiscal Federalism*, *supra* note 180, at 2592.

221. 2 U.S.C. § 934 (2018).

222. *Id.* § 907a(a).

223. *See, e.g.*, CONG. BUDGET OFFICE, 113TH CONG., CONGRESSIONAL BUDGET OFFICE COST ESTIMATE: BIPARTISAN BUDGET ACT OF 2013 (2013) <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/bipartisan-budget-act-20130.pdf> [<https://perma.cc/TBC4-TV3M>] (explaining that increased domestic spending would be offset with entitlement cuts and some revenue increases).

224. Budget Control Act of 2011, Pub. L. No. 112-25, 125 Stat. 240.

225. A budgetary entitlement is a federal program whose spending is not dependent upon annual appropriations acts. A responsive entitlement is a program whose rules provide for granting benefits to all claimants who meet specified criteria. Super, *Political Economy of Entitlement*, *supra* note 219, at 652–55.



times. SNAP also contains authority for the USDA to liberalize eligibility conditions in areas hit by natural disasters without congressional action.<sup>226</sup> UC's time limits, however, render it insufficient to aid the acute poor struggling with the protracted job market weakness accompanying a recession.<sup>227</sup> Congress has passed special extended benefit augmentations to UC in each of the past several recessions, but it has both been slow to start these programs and quick to end them;<sup>228</sup> because liberals have been worried about being seen as expanding aid to the chronic poor, they have made no serious attempt to tie extended benefits to an economic formula rather than the need for new congressional action for each recession.

States, in turn, could expand their ability to respond to acute poverty by building up large balances in rainy-day funds or by building up reserves in their TANF and other block grants. In practice, these balances, when they exist at all, have been far short of what was required to meet a significant share of the acute poor's needs in even a modest economic slump.<sup>229</sup> As a result, states have sharply tightened eligibility for anti-poverty programs within their control during recessions, disproportionately harming the acute poor in the short-term but weakening protections for all low-income people over the longer run.<sup>230</sup> Moreover, high unemployment associated with the Great Recession of 2007–09 lasted longer than most states had anticipated in setting their UC taxes, resulting in the exhaustion of their trust funds and pressure to cut benefits to the acute poor as their programs subsisted on federal loans.<sup>231</sup>

Even the way we keep and report records of expenditures in human services programs skews focus toward the chronic poor. Participation in SNAP, Medicaid, TANF-funded cash assistance and other important anti-poverty programs is reported as monthly averages. This leads naturally to dividing annual expenditures into this number to determine what appears to be an average annual benefit cost per person. In fact, however, many people participate for only relatively short periods in these programs. Thus, the actual number of people getting SNAP over the course of 2015 was not the average monthly enrollment of 45.8 million<sup>232</sup> but

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226. 7 U.S.C. § 2014(h) (2018).

227. STONE & SHAW, *supra* note 166.

228. *Id.*

229. ELIZABETH MCNICHOL & KWAME BOADI, CTR. ON BUDGET & POL'Y PRIORITIES, WHY AND HOW STATES SHOULD STRENGTHEN THEIR RAINY DAY FUNDS: RECESSION HIGHLIGHTED IMPORTANCE OF FUNDS AND NEEDS FOR IMPROVEMENTS 1 (2011), <https://www.cbpp.org/sites/default/files/atoms/files/2-3-11sfp.pdf> [<https://perma.cc/RG3L-DJKT>].

230. See Super, *Laboratories of Destitution*, *supra* note 154 (finding that states have structural impediments to responding reliably to the most serious needs of low-income people).

231. Michael Leachman, *Bill for Inadequate Unemployment Insurance Taxes Now Coming Due in Many States*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 30, 2012, 5:29 PM), <https://www.cbpp.org/blog/bill-for-inadequate-unemployment-insurance-taxes-now-coming-due-in-many-states> [<https://perma.cc/YF95-UDLQ>].

232. FOOD & NUTRITION SERV., U.S. DEP'T OF AGRIC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM STATE ACTIVITY REPORT FISCAL YEAR 2016, at 2 tbl.1, 4 (2016), <https://fns-prod.azureedge.net/sites/default/files/snap/FY16-State-Activity-Report.pdf> [<https://perma.cc/R9JB-DWGG>].

about half—again as many, roughly 70 million. Correspondingly, the average annual benefit for these 70 million would be \$1,000 rather than the reported \$1,500.<sup>233</sup> Expanding access to SNAP to more of the chronic poor might cost about \$1,500 per new recipient, but bringing in the same number of acute poor people would cost far less.

### III. POSSIBLE RESPONSES TO ACUTE POVERTY

Discussions of how to respond to chronic poverty tend to have a certain sameness—and a deep futility. Massive redistribution goes fundamentally against the U.S. political culture.<sup>234</sup> This country has tried coercive approaches extensively—most prominently in the implementation of the 1996 welfare law—and has failed to produce any secondary benefits that remotely offset the direct harm they inflict. Indeed, a significant body of research suggests that, by throwing low-income people’s lives into chaos and foreshortening their time horizons, these approaches may actually impede transitions to greater self-sufficiency.<sup>235</sup> In between the redistributive and coercive extremes are two others: a social work-oriented group that holds up various local projects as models that could be emulated<sup>236</sup> and policy wonks who suggest tinkering with existing programs.<sup>237</sup> The social work and policy wonk approaches offer short-term political plausibility, yet they actually exacerbate the long-term political problem by making promises they cannot keep. As Blank points out, “[i]f we expect too much of any one program, we will inevitably be disappointed.”<sup>238</sup>

Alleviating the hardships of acute poverty raises a very different set of strategic questions. First, the acute poor are far less prominent in political and academic discussions. Before the acute poor can win a debate, the debate must first occur.

Second, as noted above,<sup>239</sup> they lack a substantial political constituency. Those that seek to aid the chronic poor either do not consider, or find less compelling, the plight of the acute poor. Critics of the chronic poor, in turn, may find rhetorical advantage in differentiating the acute poor, but those whose goal is to shrink or dismantle anti-poverty programs generally have little reason to make a focused effort to preserve aid to the acute poor. And the stigma of poverty largely prevents

233. *See id.* at 1 tbl.1, 55 tbl.45.

234. MCCALL, *supra* note 152, at 196–201.

235. Thus, for example, single mothers with the lowest incomes must spend a great deal of time cultivating the informal support networks on which they depend to meet short-term emergencies. EDIN & LEIN, *supra* note 55, at 149–58. *See* CYNTHIA MILLER, MANPOWER DEMONSTRATION RESEARCH CORP., EXPLAINING THE MINNESOTA FAMILY INVESTMENT PROGRAM’S IMPACTS BY HOUSING STATUS (1998) (finding the beneficial effects of a welfare-to-work demonstration project concentrated among those receiving housing subsidies, perhaps because that afforded them a measure of stability).

236. *See* EDELMAN, *supra* note 65 (holding up several education and training examples).

237. *See, e.g.,* David A. Super, *From the Greenhouse to the Poorhouse: Carbon-Emissions Control and the Rules of Legislative Joinder*, 158 U. PA. L. REV. 1093 (2010) (suggesting consolidation of federal housing assistance to facilitate offsetting the effects of carbon emissions controls).

238. BLANK, *supra* note 57, at 292.

239. *See supra* Section II.D.

their most logical allies—economically insecure people who were acutely poor in the past or are likely to become so in the future—from prioritizing their needs. “Good jobs” is a much more rousing political slogan, even if it often is one beyond the reach of government policies.

Third, as a result of the political indifference to the acute poor, the dominant model for responding to their needs has been one of discretionary charity, which is grossly underfunded and ill-equipped to respond to their financial dilemmas.

Finally, even those that would like to assist the acute poor often lack the understanding and empathy to do so effectively. The policies set out in the previous Part are far more ignorant than they are malicious, at least toward the acute poor.

This Part offers some preliminary ideas on how we might more adequately meet the needs of the acute poor. Recognizing the obstacles to doing much for the acute poor, its goals are relatively modest, placing interventions within the general structure of existing U.S. public welfare law. Section A suggests a set of normative and practical principles for policies seeking to relieve acute poverty. Section B then gives specific examples of how those principles might be effectuated.

#### *A. Principles to Guide Responses to Acute Poverty*

One goal for any policy changes surely should be helping those experiencing, or fearing, acute poverty. This serves both obvious short-term humanitarian ends and can help prevent acute poverty’s destructiveness from threatening their return to relative prosperity. This also is a political necessity: the economically insecure have grown deeply cynical as their supposed interests have often been invoked to support policies that overwhelmingly benefited others.<sup>240</sup>

But a second, also crucial, goal should be to aid the acute poor without further isolating them from the chronic poor. And to be clear, the chronic poor as a group face significantly more severe hardship than the acute poor: they experience almost everything that the acute poor do and much more beyond. They may have somewhat lower expenses and more expertise dealing with the social welfare system, but their reserves of informal assistance are more likely to be tapped out—as often will be their inner reserves of hope and determination. Policies that ameliorate the very real plight of the acute poor at the expense of the chronic poor would not enhance social justice.<sup>241</sup> Fortunately, such trade-offs are unnecessary and indeed counterproductive for all concerned.

Preserving and enhancing confluences of interests between the acute and chronic poor can benefit both. As politically weak as the chronic poor are, they are more likely to have a political identity as people benefiting from human services

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240. See, e.g., CHUCK MARR & CHYE-CHING HUANG, CTR. ON BUDGET & POL’Y PRIORITIES, GOP TAX PROPOSAL RISKS A SUBSTANTIAL TAX SHIFT FROM HIGH-INCOME HOUSEHOLDS TO LOW- AND MIDDLE-INCOME HOUSEHOLDS (2011), <https://www.cbpp.org/sites/default/files/atoms/files/11-18-11tax.pdf> [<https://perma.cc/BNK5-5CA3>].

241. Duncan et al., *supra* note 113, at 88.

programs. The acute poor, in turn, are more like, and hence more sympathetic to, middle-income policymakers and voters. This could improve their standing in the politics of empathy and conceivably in power politics as well.

An example of this kind of politics in the United States can be seen in health care reform. Single-payor advocates sought to improve health care coverage for everyone, hoping to harness the politics of universal programs. Although they could boast substantial efficiency savings, a major part of their political problem was that many of the middle-class people who would benefit from expanded benefits and simpler claims procedures were not sufficiently dissatisfied with their current benefits, and sufficiently valued their supposed independence from the government, that they provided little help against critics driven by gross cost, ideological opposition to expanding government, or industry-specific self-interest. The actual Affordable Care Act (ACA) combined conventional targeting of the chronic poor (that segment excluded from Medicaid) with protection to the acute poor that might lose health care coverage due to loss of employment or a medical crisis. Enough people could envision themselves experiencing acute poverty in this manner to give ACA enough political support to pass and to allow its political supporters to survive opponents' onslaughts.<sup>242</sup> Alas, ACA's clumsy targeting, and particularly its dependence on annual accounting periods for determining eligibility, have helped to prevent it from being greeted enthusiastically enough by the economically insecure to make its coalition easily replicable.

The key interests of acute and chronic poor people alike is to overcome the destitution model of assistance, which has humiliated the chronic poor and turned away the acute poor, and the discretionary charitable model of assistance, which has served primarily as an excuse for not helping in more substantial ways rather than as a source of assistance in its own right. Doing so will be challenging, as both of these models arose in response to fears about the moral hazard, and those fears are deeply embedded in U.S. political thinking. A frontal assault on them thus likely will fail. Substantial progress is possible, however, by reducing the influence that each of them enjoys and giving greater prominence to other models that can better meet low-income people's needs while reducing economic insecurity. A great improvement would be a system that initially provides assistance to the acutely poor under more humane and trusting terms, only shifting to more austere approaches as an eventual fallback.

### *B. Specific Remedies*

Assisting the acute poor outside of the destitution and discretionary charity models could be done in several ways. An obvious first step would be to repair and strengthen existing social insurance programs to assist a larger share of the acute poor. Requiring states to provide actuarially sound financing for UC, expanding it

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242. See Super, *Modernization of American Public Law*, *supra* note 163 (describing the long-run ramifications of ACA's reordering of the politics of human services).

to cover kinds of workers that have become increasingly common since the program was designed—such as part-time workers, those in two-earner families, and those in the “gig economy”—would be important first steps. Legislation passed in response to the coronavirus pandemic shows how this can be done, but is unfortunately time-limited.<sup>243</sup> Establishing automatic federal UC benefits for regional and national recessions (eliminating the need for one-off congressional legislation) and redesigning the federal loan system so that states are not asked to repay until their economies have recovered would also be particularly helpful to the acute poor.

Some additional causes of acute poverty also are highly susceptible to coverage within social insurance models that are relatively familiar in this country. Paid family and medical leave would face fierce objections if funded by employers—directly or through an experience-rated tax like that supporting UC—but could appeal to a large enough segment of the population to work as a universal program.

Some existing means-tested programs similarly are susceptible to reforms to make them more effective for the acute poor. “For a program to be effective against transitory poverty, it should be easy to get on it, easy to get off it, and easy to make a transition to other sources of income.”<sup>244</sup> SNAP requires states to provide benefits within a week to the poorest third of applicants<sup>245</sup> and within a month to all other eligible claimants.<sup>246</sup> For SNAP to serve this function, however, it would need to restore full eligibility to the millions of childless adults currently subject to a three-month time limit. Concern for the acute poor helped drive the near-complete disappearance of vehicle resource limits and many states’ elimination of asset tests altogether;<sup>247</sup> that should become national policy. Arguments about the acute poor also helped drive repeal of overbroad filing unit rules enacted in 1981 and 1982.<sup>248</sup> Both of these changes helped the acute poor and the chronic poor alike.

The Affordable Care Act relies on the federal income tax system, which determines income on an annual basis, to administer its premium tax credits and, by extension, Medicaid. Shifting back to the monthly accounting period Medicaid historically had used would substantially improve access for the acute poor, but doing so is unlikely as it would require developing an entirely new administrative system. An expansion of current provisions for making more generous subsidies

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243. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, §§ 2102–2116, 134 Stat. 281 (2020) (codified in scattered sections of 42 U.S.C.).

244. Bane, *supra* note 140, at 392.

245. 7 U.S.C. § 2020I(9) (2018).

246. *Id.* § 2020I(3).

247. Super, *Quiet “Welfare” Revolution*, *supra* note 170, at 1347.

248. See 7 U.S.C. § 2012(i) (1984) (requiring most adult children to be in the same household with their parents if they live together and imposing the same requirement on most adult siblings), amended by Stewart B. McKinney Homeless Assistance Act, Pub. L. No. 100-77, 101 Stat. 482 (1987), and Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

available to persons suffering adverse changes in circumstances<sup>249</sup> could improve access to the acute poor if widely understood. So would the amelioration of the Act's claw-back provisions for subsidies paid to persons during bouts of acute poverty whose annual income is greater;<sup>250</sup> ironically, toughening the claw-back's treatment of the acute poor is one of the very few amendments to the Affordable Care Act on which Democrats and Republicans have been able to agree. The need for a federal structure to identify people in need on a more current, rather than annual, basis became painfully obvious when Congress had to base eligibility for "advance refunds" of its new coronavirus tax credit on taxpayers' income during one of the two previous years<sup>251</sup>—which may bear little relation to the circumstances of someone laid off in the recession.

Beyond these existing vehicles, combining more and less generous programs—merging programs free from the destitution and discretionary charity approaches with programs built on those models—could help the acute poor. This would not require more affluent voters to abandon their concerns about moral hazard. Instead, it would grant limited aid, with limited risks, in the hope that such aid will suffice for large numbers of acutely poor people with the motivation and capability to end their bouts of poverty. In the process, it may reduce the number of acutely poor people that fall into chronic poverty and ameliorate some of the hardship of the chronic poor.

First, states could advance federal benefit payments more broadly to those in acute need. A model for this is the interim assistance payments some states make to applicants for Supplemental Security Income while their applications are pending. When the Social Security Administration (SSA) approves those applications, it diverts part or all of the applicants' retroactive benefits to reimburse the state for the interim assistance it provided.<sup>252</sup> The state bears the risk that SSA will reject an application on which the state is paying interim assistance, but this mechanism gets benefits to people in severe need much more rapidly than SSA could at only a small fraction of the net cost of the payments made. In the same way, states could advance earned income tax credits and refundable child tax credits for workers that have suffered reverses.<sup>253</sup>

Second, UC benefits should transition over the time an unemployed worker receives them, beginning as pure social insurance and gradually adopting more of the characteristics of a means-tested program. This is the essence of the German UC system. All unemployed workers initially participate in a very generous

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249. 42 U.S.C. § 18082(b)(2) (2018).

250. 26 U.S.C. § 36B(f) (2018).

251. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 2301, 134 Stat. 281 (2020) (codified at 26 U.S.C. § 6428(f)(1), (5)(A)).

252. 42 U.S.C. § 1383(g).

253. Although employers for many years theoretically should have been making advance payment of EITCs to their workers, 26 U.S.C. § 3507 (repealed 2010), in practice only about 1% of them do so for a variety of administrative and relational reasons.

programs with relatively modest conditionality. Over time, its benefits phase down, increasing the financial pressure on the worker to seek and accept employment. Eventually, a still-unemployed worker is transitioned to a separate UC system that continues to provide subsistence benefits but with greater conditionality. Although concern for the acute poor's needs likely play a relatively minor role in the design of the secondary program, leaving the chronic poor vulnerable by themselves, both groups participate together for an extended period in the initial program. A prerequisite for this approach's effectiveness would be a dramatic expansion in the share of the unemployed covered by UC. The temporary Pandemic Unemployment Assistance program<sup>254</sup> Congress established in March 2020 provides a valuable model for doing so and should be made permanent without linkage to the pandemic.

And third, this country should join an increasing number of countries around the world<sup>255</sup> in establishing a conditional cash transfer (CCT) program for low-income people. A CCT, in essence, provides monthly payments to individuals and families meeting some income threshold so long as the recipients comply with some basic behavioral conditions, such as school attendance and medical check-ups. A CCT that is not designed to meet all of a family's needs could justify the sort of relatively modest conditionality that could avoid deterring many acute poor people from participating and demoralizing those that do. Yet this limited conditionality could help address policymakers' and voters' concerns about moral hazard that otherwise would afflict a simple transfer of cash or near-cash benefits. With benefits that do not strike more affluent persons as especially generous, advocates can plausibly argue that the hassle of signing up and of complying with the conditionality will suffice to deter insincere applicants.<sup>256</sup> Setting the CCT's benefits below the full cost of sustenance is unappealing, but this country's history of allowing cash welfare benefits also to fall far short of meeting basic needs leaves little political room for a more generous, less demeaning program, at least until the CCT concept develops a committed constituency.<sup>257</sup> CCTs have already been piloted in New York City and Tennessee with promising results.<sup>258</sup>

The simplest way to initiate a CCT likely would be as an adjunct to an existing program. This would save the cost and political liability of establishing a separate

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254. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 2102, 134 Stat. 281 (2020).

255. See KATHY LINDERT, WORLD BANK, SOCIAL SAFETY NETS CORE COURSE: CONDITIONAL & UNCONDITIONAL CASH TRANSFERS (2013).

256. See Super, *Offering an Invisible Hand*, *supra* note 193 (finding that such deterrence has become an increasingly important means of rationing public benefits in the United States).

257. See GENE FALK, CONG. RESEARCH SERV., R43634, TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF): ELIGIBILITY AND BENEFIT AMOUNTS IN STATE TANF CASH ASSISTANCE PROGRAMS 10–13 (2014) (describing steady erosion in states' cash assistance benefit levels to the point that even the most generous are far below the poverty line).

258. JAMES RICCIO ET AL., MDRC, CONDITIONAL CASH TRANSFERS IN NEW YORK CITY: THE CONTINUING STORY OF THE OPPORTUNITY NYC-FAMILY REWARDS DEMONSTRATION 10 tbl.ES.2, 15 tbl.ES.3 (2013).

eligibility determination bureaucracy, as well as reducing the amount of additional bureaucratic sophistication the acute poor would need to show to obtain help. If UC was reformed to broaden the fraction of workers it covers, a CCT might take the form of a family supplement to CCT benefits, conditioned on children's school attendance and health check-ups. Alternatively, it could function as a housing or clothing supplement to SNAP. As noted, SNAP currently excludes millions of very low-income childless adults; on the other hand, it has made great strides in reaching eligible low-income people beyond the chronic poor.<sup>259</sup> Medicaid's annual accounting periods, as noted, make it a problematic vehicle for reaching the acute poor, although both health-related conditions and the potential programmatic savings from ensuring that recipients can afford safe housing would have a compelling narrative nexus.

#### CONCLUSION

The sharp increase in attention to inequality has proceeded along two quite different lines. One addresses the runaway wealth of those at the very top of the distribution, such as “the one percent.” The other attends to those at the very bottom of the income and wealth ladder, the expanded ranks of the poor and of the extremely poor. The former line has received far more attention in the media and in political campaigns. This reflects Occupy's efforts as well as the sense that the one percent's ascendance is of potential concern to vast numbers of people. As concern about the one percent's political influence accelerated as the effects of *Citizens United v. FEC*<sup>260</sup> became clear, the top-regarding strain of inequality critique gained broader support.

Yet the precipitous rise of populist insurgencies in both main political parties suggests that even those not especially interested in poverty need to pay more attention to those losing out due to rising inequality. Many of the angry rebels are the economically insecure, those that have experienced bouts of acute poverty or seen their friends and families do so. They are all too aware of the damage acute poverty can do, and they are gripped with fear that this damage will leave them and their children chronically poor. Although their criticism of the government focuses on economic management—trade, immigration, bailouts for big banks—they are keenly aware that public programs all too often did little to help them when they fell into distress. When they complain that our government cares little for people like them, they are all too right: our political system devotes far too little attention and money to people in economic distress, and when it does, it concentrates overwhelmingly (although not benignly) on the chronic poor. Although tens of millions strong, the acute poor are invisible in our midst.

This invisibility, and demagogues' efforts to turn the economically insecure against the chronic poor, must not be allowed to stand. The interests of the acute

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259. Super, *Quiet “Welfare” Revolution*, *supra* note 170.

260. *Citizens United v. FEC*, 558 U.S. 310 (2010).



poor and the chronic poor overwhelmingly coincide. Neither the destitution model, predominately applied to the chronic poor, nor the discretionary charitable model, designed for the acute poor, are human or even efficient. A coalition of those concerned about all low-income people would have a far better chance of success than anything seen in anti-poverty politics since the Great Depression.

The acute poor provide a face for low-income people that critics will find much harder to disparage. They also are far more integrated into the communities of middle- and upper-income people. The remarkable, sudden turnaround in public opinion about LGBTQ people,<sup>261</sup> and their rights to full inclusion in society, resulted less from technical arguments than from the brave choice of millions of individual LGBTQ people to come out to those around them. Once straight voters realized that they knew lesbians and gays, who were no more or less flawed than other people in their circle, treating LGBTQ people as “other” became untenable. As Latinos/Latinas and Asian-Americans more commonly live and work alongside people from families longer in this country, the stereotypes driving anti-immigrant demagoguery face greater resistance. Advocates for people with disabilities, particularly for people with mental health challenges, have been pursuing a similar strategy that shows some early signs of success.<sup>262</sup>

That has never seemed a particularly viable strategy for anti-poverty advocates. In our economically stratified society, a great many middle- and upper-income people really do not know well any chronically poor people. Few are likely to have a meaningful, empathy-building exchange with their janitors, gardeners, or even childcare providers. This distance continues to present abundant opportunities for opponents of anti-poverty programs to paint horrific tales of “behavioral poverty”<sup>263</sup> to convince middle-income voters that something must be deeply wrong with the poor just as demagogues had demonized LGBTQ people and those with mental illness.

The acute poor could provide a partial response to this enduring problem, serving as ambassadors to bring understanding of and empathy for low-income people generally. Large numbers of middle- and even upper-income people have suffered acute poverty on at least one occasion, and many more know someone who has. Seeing through them that poverty is overwhelmingly the result of economic conditions and bad luck rather than personal vice could transform the politics of poverty in this country. To be sure, knowing some “good” low-income people will not prevent more affluent people from accepting stereotypes of the

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261. See, e.g., WILLIAM N. ESKRIDGE, JR., *EQUALITY PRACTICE: CIVIL UNIONS AND THE FUTURE OF GAY RIGHTS* (2002) (predicting an evolution in legal arrangements giving same-sex partners gradually greater rights).

262. Martha M. Lafferty, *Tennessee Removes Discriminatory Questions from Attorney Licensure Application*, DISABILITY RIGHTS TENN. (Mar. 17, 2014), <https://www.disabilityrightstn.org/resources/news/march-2014/tennessee-removes-discriminatory-questions-from-at> [https://perma.cc/BL5S-FME2].

263. See, e.g., ROBERT RECTOR, HERITAGE FOUND., *STRATEGIES FOR WELFARE REFORM* (1993) (contrasting material poverty with behavioral poverty).

chronic poor, just as some people manage to bracket their friendships with people of color, LGBTQ people, or people with mental disabilities while maintaining their bigotries. But it can be a start. Expanding empathy for low-income people is becoming increasingly important as political attacks on them increase and as the last of those with personal memories of the Great Depression pass from the scene.

To date, however, this country has made bouts of acute poverty so devastating, and so painful, that people feel the strong urge to put those episodes behind them without further thought, much less discuss their experiences with friends. Coupled with the powerful stigma against low-income people generally, this leaves huge numbers of people who could humanize the face of poverty very much “in the closet.” If anything, critics’ persistent if fanciful accounts of the supposedly opulent lifestyle provided by programs for the chronic poor may build resentment among acute poor people who are left largely to fend for themselves. Whether the widespread, common suffering resulting from the coronavirus pandemic legitimates the acute poor and brings them together with the chronic poor and other natural allies remains to be seen.

Relieving the suffering of the acute poor is an important end in itself and one that anti-poverty advocates have far too long neglected. Their hardship is real and often extreme, the long-term harm they suffer can be as devastating to them as it is invisible to outsiders. And the cost of helping them is relatively modest because they typically need help for a shorter period.

But more broadly, by helping the acute poor, we can help all low-income people. Many of the changes to anti-poverty programs necessary to assist the acute poor will also make an important difference for the chronic poor. More broadly, demanding that claimants for public aid assume a destitute, broken, and dependent role is brutalizing for acute and chronic poor people alike, exacerbates the fissures in our social fabric that poverty causes, and ultimately undermines the programs imposing those rules. If the chronic poor have any hope of escaping the isolation and ostracism they now suffer, tying their fate more closely to that of the acute poor is as politically indispensable as it is morally just.

